

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 3. AGRICULTURE

#### CHAPTER 2. DEPARTMENT OF AGRICULTURE - ANIMAL SERVICES DIVISION

##### PREAMBLE

1. **Sections Affected:**

|          |  |
|----------|--|
| R3-2-801 | <b><u>Rulemaking Action:</u></b> New Section |
| R3-2-802 | Repeal                                       |
| R3-2-802 | New Section                                  |
| R3-2-801 | Renumber                                     |
| R3-2-803 | Amend  |
| R3-2-803 | Renumber                                     |
| R3-2-804 | Amend  |
| R3-2-805 | Repeal                                       |
| R3-2-804 | Renumber                                     |
| R3-2-805 | Amend  |
| R3-2-806 | Amend  |
| R3-2-807 | Amend  |
| R3-2-808 | New Section                                  |
| R3-2-808 | Renumber                                     |
| R3-2-809 | Amend  |
2. **The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 3-605(C)

Implementing statutes: A.R.S. §§ 3-601.01(A), 3-606, 3-611, 3-625, 3-663
3. **The name and address of the agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Shirley Conard, Rules Specialist

Address: Arizona Department of Agriculture  
1688 West Adams, Room 124  
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420
4. **An explanation of the rules, including the agency's reasons for initiating the rules:**

No records can be found regarding the inception of these rules and no one remembers exactly when they were first promulgated. However, even with the amendments of four rules in the mid-'70s this Article is outdated in the rulemaking requirements of the Office of the Secretary of State.

This rulemaking updates current format and structure guidelines, clarifies existing language, and establishes that all milk and milk products for human consumption must meet the current PMO standards for production, processing, storing, handling and transportation. Requirements already mentioned in the Grade A Pasteurized Milk Ordinance (PMO) are eliminated and the remaining information is clarified.

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Currently used terms have been consolidated into one rule and "plate line" has been defined for clarity. The milk-o-tester is no longer a source for determining the butterfat content of raw milk therefore requirements for this machine is unnecessary and have been removed. The terms "dairy barn" and "milk house" are not used within the Arizona dairy community and has been replaced with the terms "parlor" and "milk room" respectively. Measurements that were previously unclear, such as "minimum distance," or "sufficient space" have been changed through editing for clarity or by establishing specific dimensions.

The weighing of ice cream is regulated by the Department of Weights and Measures and is removed from this Article.

Retail establishments that reconstitute frozen desserts from powdered mixes and soft-serve frozen dessert locations are regulated by country health departments and specific requirements dealing with these areas are removed from the rules.

5. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state.**

Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*

The Department anticipates no additional costs associated with this rulemaking.

B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

Businesses will not be economically impacted by this rulemaking.

D. *Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public are not directly affected by changes of this proposed rulemaking.

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Shirley Conard, Rules Specialist

Address: Arizona Department of Agriculture  
1688 West Adams, Room 124  
Phoenix, Arizona 85007

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8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons, may request an oral proceeding on the proposed rules:**

Date: August 3, 1998

Time: 10 a.m.

Location: Arizona Department of Agriculture  
1688 West Adams, Room 206  
Phoenix, Arizona 85007

Nature: Oral Proceeding

9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules.**

None.

10. **Incorporations by reference and their locations in the rules:**

R3-2-801(1) "3-A Sanitary Standards" and "3-A Accepted Practices, June 1, 1992.

R3-2-801(9) Grade A Pasteurized Milk Ordinance, including the Administrative Procedures and Appendices, 1995 Revision, and the PMO updates by the Interstate Milk Shipper's Conference, IMS-a-39, effective September 26, 1997 and IMS-a-40, effective October 24, 1997.

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R3-2-807(A)(7)(b) The List of Proprietary Substances and Nonfood Compounds, January 1, 1995.

**11. The full text of the rules follows:**

**TITLE 3. AGRICULTURE**

**CHAPTER 2. DEPARTMENT OF AGRICULTURE - ANIMAL SERVICES DIVISION**

**PREAMBLE**

**ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL**

**Section**

**R3-2-801. Definitions**

**R3-2-802. Ice cream**

**R3-2-802. Milk and Milk Product Standards**

**R3-2-801. R3-2-803. Milk and milk products labeling Milk Product Labeling**

**R3-2-803. R3-2-804. Trade products Products**

**R3-2-805. Butterfat testing**

**R3-2-804. to R3-2-805. Grade "A" raw milk Raw Milk For Consumption**

**R3-2-806. Dairy barns Parlors and Milk Rooms**

**R3-2-807. Frozen desserts Dessert Plant and Processing Standards**

**R3-2-808. Frozen Desserts Reconstituted From Powdered Mixes**

**R3-2-808. R3-2-809. Medicinal, chemical Chemical and radioactive Radioactive residues Residues in milk Milk**

**ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL**

**R3-2-801. Definitions**

In addition to the definitions provided in A.R.S. §§ 3-601 and 3-661 the following terms apply to this Article.

1. "3-A Sanitary Standards" and "3-A Accepted Practices" means the criteria for cleanliness of dairy processing equipment, published June 1, 1992. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.
2. "C-I-P" means a procedure by which equipment, pipelines and other facilities are cleaned-in-place as prescribed in the 3-A Accepted Practices.
3. "Converted" means the process by which a frozen dessert is changed from a frozen to semi-frozen form without any change in the ingredients.
4. "Fluid trade product" means any trade product as defined in A.R.S. § 3-661(3) that resembles or imitates milk, low fat milk, chocolate milk, half and half, or cream.
5. "Food establishment" means any establishment, except a private residence that prepares or serves food for human consumption, regardless of whether the food is consumed on the premises.
6. "Frozen desserts mix" or "mix" means any frozen dessert before being frozen.
7. "Grade A raw milk" means raw milk produced on a dairy farm that conforms to Section 7 of the PMO and the requirements of R3-2-805.
8. "Parlor" and "milk room" means the facilities used for the production of Grade A raw milk for pasteurization.
9. "Plant" means any place, premise or establishment or any part, including specific areas in retail stores, stands, hotels, restaurants and other establishments where frozen desserts are manufactured, processed, assembled,

stored, frozen or converted for distribution or sale, or both. A plant may consist of rooms or space where utensils or equipment is stored, washed or sanitized and where ingredients used in manufacturing frozen desserts are stored. Plant includes:

- a. "Manufacturing plant" means a location where frozen desserts are manufactured, processed, pasteurized and converted.
  - b. "Handling plant" means a location that is not equipped or used for the manufacturing, processing, pasteurizing or converting of frozen desserts, but where frozen desserts are sold or offered for sale other than at retail.
10. "Plate line" means a horizontal structural member, such as a timber, that provides the bearing and anchorage for the trusses of a roof or the rafters.
  11. "PMO" means the Grade A Pasteurized Milk Ordinance, 1995 Revision. This term includes the information found in the Administrative Procedures and Appendices, and the PMO updates in the IMS-a-39, effective September 26, 1997 and the IMS-a-40, effective October 24, 1997. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.
  12. "Retail food store" means any establishment offering packaged or bulk goods for human consumption for retail sale.

**R3-2-802. Ice cream**

- A. The weighing of ice cream by the State Dairy Commissioner's Office shall be done in establishment where the product is offered for sale to the public.
- B. Individual packages of ice cream shall be weighed separately. The following are the required minimum weights per package after the weight of the container has been deducted:

|            |              |
|------------|--------------|
| 1 gallon   | 4 1/2 pounds |
| 1/2 gallon | 2 1/4 pounds |
| 1 quart    | 18 ounces    |
| 1 pint     | 9 ounces     |
1. In a single container where the size is larger than one gallon, the minimum weight of the contents shall be the number of gallons or number of gallons and fractions of gallons multiplied by 4 1/2 pounds.
2. Containers holding less than one pint, the capacity of which must be designated in fluid ounces, the minimum weight less the carton weight must be at the rate of .56 avoirdupois ounces per fluid ounce.

**R3-2-802. Milk and Milk Products Standards**

Unless specifically mentioned in A.R.S. Title 3, Chapter 4, Article 1, or in this Article, all milk and milk products, except frozen desserts, sold or distributed for human consumption shall meet the PMO standards for production, processing, storing, handling and transportation.

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**R3-2-801. to R3-2-803. Milk and milk products labeling Milk Products Labeling**

- A. All milk and milk products listed in Chapter 4, Article 1, A.R.S. §§ 3-601(10) and 3-627, and Sections 1; and 2 and 4 of the United States Public Health Service Milk Ordinance and Code PMO shall be designated by the name of the product as used in the definition of the product and must shall conform to its definition. The name of the product must be on all containers or closures, and must be readily legible.
- B. The letter designating the grade of the product and other information necessary to describe the product must appear on all containers or closures and must be readily legible.
- B. All milk and milk products shall conform with the labeling requirements in A.R.S. §§ 3-601.01 and 3-627, Section 4 of the PMO, and 21 CFR 101, 131, and 133, effective 1996.
- C. The name of the manufacturer or processor shall be on all cartons or closures where it can be easily seen. A manufacturer or processor who has plants in other states may use a code number or letter to designate where manufactured or processed. When a manufacturer or processor has more than one plant within the state of Arizona, the The Dairy Supervisor shall issue a code number or letter for each plant shall be issued a different code number or letter. The code number or letter shall be issued in writing by the State Dairy Commissioner and the State Dairy Commissioner and shall keep a record of the numbers or letters issued. When a number or letter is used, the State Dairy Commissioner shall notify the State Department of Health of its issuance. Manufacturers and processors shall use the state code, No. 04, with their plant number.
- D. When a plant manufactures or processes milk or milk products and packages them for other concerns for resale and the container or closure is not labeled the same as the manufacturer's or processor's like product, the following information, in addition to the general required information, must statement "Manufactured or Processed at (name and address of plant or code number or letter)" shall be included on the carton or closure. The carton or closure may also contain the statement.
1. "Manufactured or Processed at: (name and address of plant or code number or letter)";
  2. "Distributed by: (name of person or firm).";
- E. Milk and milk products containers or closures shall not have any written, printed or graphic matter displayed on them which tends to be misleading.
- F.E. A container or closure with the approved label thereon must be filed with the State Dairy Commissioner before such container or closure is used. The approval of said labeling on the container or closure must be in writing and signed by the State Dairy Commissioner or his Chief Deputy.
- New or modified label. Any person wishing to use a new or modified label on a container may submit the label to the Dairy Supervisor for review.
- G. When applying for a new label, the applicant must present duplicate copies of the proposed label, one of which will be kept by the State Dairy Commissioner. If any changes are to be made, they will be noted on the copies and signed by the State Dairy Commissioner or his Chief Deputy. These changes, if any, must be complied with on the containers or closures which are to be submitted to the State Dairy Commissioner as required in subsection (F). The Commissioner shall render a decision within ten days of the date of application.
1. If a new or modified label is submitted, the person shall provide duplicate copies of the proposed label.

2. If the proposed label does not meet labeling standards, the Dairy Supervisor shall note the changes on the copies, and sign and return the proposed label to the person.
3. A written request may be submitted for additional time to use the inventory amounts of slow moving cartons or closures before using a modified label.

- H.F. When a concern desires Any person wishing to market, process, manufacture or sell a any other food product which might be elased as a milk product, shall submit a written request for permission to process or manufacture or sell the product shall be submitted to the State Dairy Commissioner Supervisor. Upon receipt of the written request, the State Dairy Commissioner must, within ten days, rule that the product is or is not a milk product. Time limit may be extended if the aid of the Attorney General is required in determining the nature of the product. If it is ruled a milk product, the proposed label must be applied for and will be handled as in R3-2-801(F) and (G).
- I. All containers or closures in use on the effective date of these regulations must be reviewed for approval in writing. If changes in labeling are necessary, they must be made within six months after these regulations become effective. Inventory amounts of slow moving cartons or closures must be submitted to the State Dairy Commissioner who may grant additional time if requested. Both must be in writing.
- J. The State Dairy Commissioner adopts Code No. 02 assigned to the state of Arizona by the National Labeling Committee which was recommended for use by the Ninth National Conference on Interstate Milk Shipments. This National Code Number may be used by Arizona manufacturers or processors in conjunction with their state Code Numbers on containers or closures.
- K. When a plant purchases another plant and legally acquires the use of its trade name that has been registered with the State Dairy Commissioner, they must notify the State Dairy Commissioner in writing. The State Dairy Commissioner will then transfer the Registered Trade Name to the new owner. In ease the purchasing plant did not legally acquire the Registered Trade Name, it cannot use the containers or closures bearing said Registered Trade Name unless approval in writing is granted by the owner of the Trade Name, a copy of which must be filed with the State Dairy Commissioner.

**R3-2-803. to R3-2-804. Trade products Products**

- A. Definitions:
1. "Food establishment" means any establishment except a private residence, which prepares or serves food for human consumption, regardless of whether such food is to be consumed on or off the premises.
  2. "Fluid trade product" means any trade product as defined in A.R.S. § 3-661(3) which has resemblance to or is in imitation of milk, low fat milk, chocolate milk, half and half, or cream. All fluid trade products containing any milk solids shall be designated for regulatory purposes as fluid milk products.
  3. "Retail food store" means any establishment which offers for retail sale packaged or bulk goods for human consumption.
- B.A. Manufacture: Any fluid trade product containing milk solids shall be regulated as a fluid milk product.
1. All fluid trade products shall conform to the following chemical, bacteriological and temperature standards:  
Temperature: 50° Fahrenheit  
Bacteria limits: 30,000 per ml.  
Phosphatase: Less than 1 ug per ml.  
Coliform: not to exceed 10 per ml.

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2. All fluid trade products shall be produced, processed and pasteurized in plants which conform to standards which are equivalent to those required by the 1953 edition of the United States Public Health Service Milk Ordinance and Code, a certified copy of which shall be on file in the office of the Secretary of State.

**C.B. Advertising, display and sale:**

1. No trade product shall be advertised, displayed for sale, or sold in a retail food store in any manner or under any circumstances or conditions likely to mislead, deceive or confuse the public into believing such product is a real product.

- 2.1. Any retail food store may submit its methods and techniques for the advertising, display and sale of trade and real products to the Commissioner Dairy Supervisor for a determination as to determine compliance with this regulation Section.

**D. Serving:**

- 1.2. No food establishment shall place before any patron or employee, for use as food, any trade product or any food whose chief main ingredient is a trade product, unless there one of the following disclosures is posted for each product, in a prominent place on the premises, or is plainly visible on each menu, upon the same portion of the menu where other food items are described, one of these disclosures:

- a. "\_\_\_\_\_ served here instead of \_\_\_\_\_."  
(brand or common name of trade product) (common name of dairy product) for each product; or

- b. "Nondairy products served here".

- 2.3. No food establishment shall advertise or otherwise represent to the public that it serves, or uses in the preparation of a food, a real product when it actually serves or uses a trade product.

**E.C. Labeling: Except as follows, all labels shall comply with the PMO and 21 CFR 101, 131, and 133.**

1. The Commissioner shall approve or disapprove each statement or claim contained on the label of a trade product. Each such statement of claim shall be submitted to the Commissioner with such Any person wishing to use a new or modified trade product label shall file for written approval with the Dairy Supervisor before the container or closure is used. The applicant shall provide duplicate copies of the proposed label and any supporting materials as may be necessary to establish its truthfulness, reasonableness, relevancy and completeness.
2. The use of the manufacturer's name and symbol on a real product shall not prohibit their use on a trade product, provided that such use on a real product was in effect on or before January 1, 1969, and provided further, that such use does not otherwise violate the restrictions of subsections (A), (B), and (C) or A.R.S. § 3-663.
- 3.2. Unless each ingredient of a grade trade product is homogenized or pasteurized, the whole product shall not be labeled or advertised as a an homogenized or pasteurized product. However, ingredients which that are homogenized or pasteurized may be so identified as homogenized or pasteurized in the listing of ingredients.
4. Unless each ingredient of a trade product is pasteurized, the whole product shall not be labeled or advertised as a pasteurized product. However, ingredients which are pasteurized may be so identified in the listing of ingredients.

- 5.3. Except for combined ingredients constituting less than 1% of the whole product Unless or unless each ingredient of a trade product, except ingredients which combined constitute less than one percent 1% of the whole product, qualifies as grade A, the whole product shall not be labeled or advertised as a grade A product. However, ingredients which are Ingredients that qualify as grade A may be so identified as grade A in the listing of ingredients.

- 6.4. Any Trade trade products which are produced outside the state of Arizona and labeled in accordance with federal law as prescribed in R3-2-802, may be sold within the state of Arizona provided that such the products meets the requirements of A.R.S. §§ 3-663, 3-664 and 3-665, except that:

- a. The listing of ingredients on the label may omit the percentage any ingredient represents of the whole product.

- b. Terms which may be terms associated with real products, or statements regarding real products, may appear on the label of a trade product when they are used in a manner which to discloses:

- a. i. That the product is not a real product; or,

- b. ii. The purpose or uses of the trade product, except that no

- i. (1) No term or statement shall be approved pursuant to this provision unless it appears in conjunction with and less prominently than, either a disclaimer required pursuant to A.R.S. § 3-663(F) or other disclosure that the product is not a real product.

- ii. (2) The use of any terms which may be associated with a real products, or statements regarding a real products, on the label of a trade product must shall be reasonable, relevant, truthful, complete, and not deceptive or misleading.

**F. Display and information panels:**

1. Gable type containers—The gable sides, including the gables, will be the principal display panels. The pour side of the container shall be the required information panel.
2. Square or flat top containers—On the square or flat top containers, the principal display panels shall be the panel directly to the left of the pour spout and the panel directly opposite the panel to the left of the pour spout. Either one of the remaining two vertical panels shall be the required information panel. The product name only shall appear on the top of the container.
3. Glass and plastic containers—On all glass and plastic containers, two opposite sides, including the shoulders, shall constitute the principal display panels. The product name only shall appear on all caps and closures. Either of the sides adjacent to the principal display panel may be used for the required information panel. The above is applicable to all other cylindrical containers.
4. Other type containers—Other types of containers and closures shall be submitted, as prescribed in R3-2-802(D) to the Commissioner for approval of the designation and requirements of the principal display and required information panels.
5. Minimum type sizes by container size. (Other sizes of containers and closures shall be submitted to the Commissioner for approval of minimum type sizes.)

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- a. One-half pint to one pint, inclusive, not less than 1/8-inch in height and width.
  - b. Greater than one 1/4 pint but not larger than one quart, inclusive, not less than 3/16-inch in height and width.
  - c. Greater than one quart but not larger than two quarts, inclusive, not less than 1/4-inch in height and width.
  - d. Greater than two quarts but not larger than one gallon, not less than 5/16-inch in height and width.
  - e. Greater than one gallon but not larger than 2 1/2 gallons, not less than 1/2-inch in height and width.
6. All printed matter must be of bold face type in a color contrasting with the background so as to be clearly legible.
7. Principal display and required information panels:
- a. The principal display panel shall contain the following:
    - i. Product name.
    - ii. Quantity statement.
  - b. The product name only shall be on the gable portion of the gable containers.
  - c. In case of a beverage product containing vegetable oil, the statement "Vegetable Oil Added" must appear on the principal display panel in print not smaller than one-half the size of the product name.
  - d. The required information panel must contain the following:
    - i. A complete list of ingredients as provided by law.
    - ii. Name and address including zip code of manufacturer or distributor. In the case of a distributor who is not the manufacturer, the manufacturer or processor must be identified by the statement: "Processed by Plant No. \_\_\_\_" (code number).
  - e. If the product is pasteurized, homogenized or grade A, it may be so stated on the required information panel.

**R3-2-805. Butterfat testing**

- A. Milko Tester. Licensed testers using the Milko Tester, an electronic transistorized apparatus utilizing light transmission for determining the butterfat content of raw milk on which payment is based shall follow explicitly the current instructions for calibration, operation, maintenance, and cleaning of the equipment issued by the manufacturer, unless otherwise instructed in writing by an authorized representative of the State Dairy Commissioner. In no case shall the method of calibration deviate from the current instructions of the Association of Official Analytical Chemists.
- B. The following shall govern the operation of the Milko Tester:
- 1. The latest edition of the manufacturer's operation manual shall be available at all times in conjunction with the instrument.
  - 2. The minimum sample for use by the Milko Tester for fat determinations shall be five ounces for both fresh and preserved samples.
  - 3. Where the Milko Tester is used, supplemental Babcock or Mojonnier equipment must be provided. The tester utilizing the Milko Tester must be licensed for both the Milko Tester and the Babcock or Mojonnier methods of analyses.
  - 4. The Milko Tester must be equipped with a constant voltage transformer.

- 5. It is the responsibility of the licensed tester to determine that the Milko Tester is operating correctly. If at any time he believes the results obtained are biased, all further testing must be done by the Babcock or Mojonnier method until the bias has been eliminated.
- 6. Samples used for calibration shall be prepared in the same manner as samples upon which the producer payments are to be based. They shall be retained for the same time and under the same conditions as for official samples used for basis of payment. Samples used for calibration shall include samples in the butterfat ranges of 2-4 percent and 6-7 percent.
- 7. When any sample differs in butterfat content by greater than 2.0 percentage points from the sample preceding it through the instrument, there shall be an immediate retest and the second test shall be the one recorded. On all retesting of samples, the retest shall be the test used.
- 8. All calibration results and check tests for initial calibration and all tests for checking the accuracy of calibration shall be recorded in a permanent record book.
- 9. "Official test" means milk sampled and tested for its butterfat content by means of the Babcock test or any equally accurate and efficient test approved by the State Dairy Commissioner.
- 10. Any instrument shall read to the second decimal place and shall report findings to the second decimal place.
- 11. During the use of the Milko Tester each day, a sample of milk of known percentage of fat shall be tested with the Milko Tester after every 30 tests and the results shall be recorded on the permanent test record. If at any time there is variation from the original test exceeding 0.04, the Milko Tester must be rinsed thoroughly with versene solution and the machine checked for zero setting in order to get agreement on the test of the standard. At least three standard checks must then be run and if the average variation is in excess of 0.06, the Milko Tester must be recalibrated. If after the three standard checks are run and the instrument is recalibrated, then all samples run after the last check sample must be retested. The results of the rechecks will become official.
- 12. Potassium dichromate, not more than one percent by weight of sample of market milk, must be used if a preservative is added to the milk sample.

**R3-2-804, to R3-2-805. Grade "A" raw milk Raw Milk For Consumption**

**A. Definitions:**

- 1. "Grade 'A' raw milk" is raw milk produced upon dairy farms conforming to all items set forth in the Federal Milk Ordinance for the production of Grade "A" raw milk for pasteurization and the additional requirements contained in these requirements. The bacterial plate count or direct microscopic clump count of the milk shall not exceed 20,000 per milliliter (and not more than 10 coliform per milliliter) as determined by Section 6 of the Federal Milk Ordinance.
- 2. "Federal Milk Ordinance" means the 1965 Recommendations of the United States Public Health Service Grade A Pasteurized Milk Ordinance, 1967 Edition.
- 3. "Health Authority" means the State Dairy Commissioner or his authorized representative.

- B. License and permit—No person shall engage in the business of Producer-Distributor of Grade "A" raw milk without a permit from the Health Authority and a license from the State Dairy Commissioner, as provided by law.



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**C.A. Animal health**—All herds and additions thereto cattle from which Grade "A" raw milk is produced shall be tested and found free of tuberculosis before any milk therefrom is sold, and all herds shall be retested at least every 12 months thereafter. All herds and additions thereto cattle from which Grade "A" raw milk is produced shall be tested and found free of brucellosis before any milk therefrom is sold, and all herds shall be retested every 12 months thereafter and/or have negative ring tests for brucellosis as determined by the Animal Disease section of the state Livestock Sanitary Board State Veterinarian, or both.

**D. Milk house**—The milk house shall be provided with two separate rooms—one for the cleaning and sanitizing of equipment and utensils and one for handling of milk and storage of cleaned utensils.

**E.B. Cooking of milk**—Grade "A" raw milk shall be cooled immediately after completion of milking to 50° 45° F. or less and shall be maintained at that temperature until delivery, as determined by Section 6 of the Federal Milk Ordinance.

**F.C. Bottling and capping**—Grade "A" raw milk shall be bottled on the farm where it is produced. Bottling and capping shall be done in a sanitary manner by means of on approved equipment and these operations shall be integral in one machine. Hand capping is prohibited. Caps and cap stock shall be purchased and kept in sanitary containers and shall be kept therein until used.

**G.D. Vehicles**—All vehicles used for the distribution of Grade "A" raw milk shall have prominently display the distributor's name prominently displayed thereon.

**H.E. Labeling**—Grade "A" raw milk shall be labeled in accordance with all applicable Dairy Commissioner's laws and regulations as prescribed in R3-2-803.

**R3-2-806 Dairy barns Parlors and Milk Rooms**

**A. Definitions:**

1. "Commissioner" means the State Dairy Commissioner or his authorized representative.
2. "Milk barn", "stable" or "parlor" and "milk house" or "milk room" means the facilities used for the production of Grade A raw milk for Pasteurization.

**B.A. Construction Plans:**

1. Plans and specifications for all milk houses, milking barns, stables and parlors which are hereafter constructed, re-constructed or extensively altered, shall be submitted to the Dairy Commissioner for written approval before work is begun. Any person constructing or extensively altering a parlor or milk room shall submit the plans and specifications to the Dairy Supervisor for written approval before work is begun.
2. Plans shall consist of a scaled plot plan design with elevations and all pertinent dimensions.
3. All Any deviations from the minimum requirements in this Section and from approved plans and specifications may be made only after written approval of the Dairy Commissioner Supervisor.

**C.B. Site:**

1. The milking barn and milk house parlor and milk room shall be located in a place free from contaminated surroundings.
2. Feed racks, calf, bull, hog, poultry pens, horse stables, horse corrals, and shelter sheds shall not be located closer than 100 feet from the milk house room or 50 feet from the milking barn parlor.

**D.C. Surroundings:**

1. Dirt or unpaved corrals or unpaved lanes shall not be located closer than 25 feet from the milking barn parlor or closer than 50 feet from the milk house room; corrals shall be constructed to drained with adequate disposal facilities to remove runoff from the lowest point of the grade. A minimum of three percent 3% slope shall be obtained in unpaved corrals where the available space for each animal is 400 square feet or less but may be reduced proportionately to 1 1/2% percent with when 800 square feet or more is provided for each animal.
2. A paved (concrete or equivalent) ramp or corral shall be provided to allow the animals to enter and leave the milking barn parlor. This paved area shall be curbed (minimum of six at least 6 inches high and six 6 inches wide) and sloped to a paved drain area. The perimeter of the area shall be constructed in a manner that will retain the wash water to a paved drain area. Paved The paved area shall provide access to permanent feed racks or mangers and to water troughs. water Water troughs shall be provided with an apron of concrete or equivalent at least ten 10 feet wide at the drinking area. The cow standing platform at permanent feed racks shall be paved with concrete or equivalent for at least ten 10 feet back of the stanchion line. The stanchion line shall have a curb at least one 1 foot in height.

**E.D. Elevations**—Floor level elevations of all structures shall be at least 15 inches above surrounding ground level and shall facilitate carrying carry drainage 50 feet from the milking barn parlor and at least 100 feet from the milk house room. In lieu Instead of natural drainage, automatic pumps or other satisfactory means shall be provided for drainage disposal of drainage.

**F.E. Milk house room:**

1. The milk house room shall not be more than 15 feet from the milking barn parlor and may be located under the same roof (extended) as the milking barn parlor. The milk house room shall consist of one 1 or more rooms for the care handling of the milk and the cleaning, sanitization, and storage of the milk handling equipment. Hot and cold running water outlets shall be available in each room. The There shall be a minimum of 5 feet minimum distance between a farm milk tank at the widest point and the milk house room wall where the wash vats are installed shall be at least five feet. The Except for currently installed milk tanks, there shall be at least 3 feet minimum distance between any farm tank or farm tank appurtenance and the milk house room walls shall be two feet.
2. Passageway.—When The passageway is constructed between the milk house room and milking barn parlor it shall provide not less than a three have at least a 3-foot clearance for ingress and egress and have ceiling or roof ventilation. Equipment such as milk receivers, dump tanks, or coolers which that are part of an enclosed milk line system may be installed in the passageway if:
  - a. A three 3-foot clearance is allowed for the walkway;
  - b. Sufficient space Space is provided between walls and equipment to permit disassemble the disassembly of equipment for cleaning or inspection of equipment, walls, floors;
  - c. Passageway walls shall be finished in a manner similar to the milk room. The passageway between the parlor and the milk room may be structurally closed at one end. The barn parlor may be sepa-

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rated from the passageway by a pipe rail fence if the slope of the ~~barn~~ parlor floor is away from the passageway. If the slope of the ~~barn~~ parlor floor is toward the passageway, a concrete wall of at least 12 inches in height shall be provided. Rustless pipe sleeves with tight fitting flanges and protective closures shall be installed where the milk lines, hoses for tankers, and wash lines go through the walls or stationary doors.

3. Floors, --

a. The floors of the milk house room, and passageway if provided, shall be constructed of 4-inch concrete at least four inches thick, or other equally impervious material approved by the Commissioner, troweled smooth with a true slope. The milk house room floor shall slope at least 1/4 inch to the foot to a vented trapped drain. The passageway floor shall slope at least one 1 inch in ten 10 feet toward a drain or gutter. A two-inch minimum radius cove is required at all floor and wall junctions. The cove shall be an integral part of the floor. All floor and wall junctions shall have at least a 2-inch radius cove. A sand or rock cushion of at least six inches shall be placed under concrete floors on soils other than sandy loams. Concrete floors placed on soils other than sandy loams shall have a sand or rock cushion at least 6 inches deep.

b. Drainage from the milk room may be independent or connected with the parlor drainage. Floor drains shall be vented, have a water trap, and a clean out plug. All floor drains and pipes under the milk room and parlor floor shall have leak-proof connections and meet all applicable plumbing codes.

4. Walls and ceilings:

a. ~~The milk house, partitions and ceilings shall be constructed of smooth pressed lumber, concrete, masonry or water proof cement plaster and shall have a smooth finish. Other types of materials may be used if they are approved in writing by the Commissioner. All walls and partitions shall be of concrete or masonry to a height of not less than eight inches above the floor. All walls and ceilings shall be constructed of a light colored, impervious material with a smooth finish. Where~~ When concrete block or masonry construction is used, all voids below the floor line shall be filled with concrete.

b. ~~Main~~ The main ceiling height shall be at least nine 2 feet above the floor but in no case not less than the height of the farm tank plus ~~two 2~~ feet. New or extensively altered ceiling shall be at least 6 feet above the tank. Ceiling ~~The ceiling may follow the rafters to the plate which shall not be less than seven at least 7 feet three 3 inches above the floor.~~

5. Doors and windows:

a. Each room of the milk house room shall have at least one 1 glass or other light-transmitting material. The total window area in each room shall be equivalent to at least 1/10 of the floor area. Window screens shall be standard 16-inch mesh and are required on all windows that open. Only stationary type windows may be installed on the ~~barn~~ side of the milk house. All opening windows shall have at least 16-inch mesh screen.

b. Exterior doors of the milk house room shall open outward, be solid, self-closing, and tight fitting.

Any door from the passageway shall be a solid door, metal covered on both sides of the bottom half. Wooden door jambs or frames shall terminate ~~six 6~~ inches above the floor, and the concrete floor cove shall extend to the jambs or frames.

c. ~~Artificial light shall be installed in each room to provide at least a minimum of 20 footcandles of light on all working areas in the milk house operations. All working areas in the milk room shall contain at least 30 footcandles of lighting.~~

6. Ventilation, --At least ~~two 2~~ wall ventilators shall be installed horizontally not more than ~~ten 10~~ inches or less than ~~four 4~~ inches above the floor in each milk room. The wall ventilators shall provide openings equivalent to ~~two percent on 2%~~ of the floor areas. Wall-vent openings shall be equipped with metal framed insect screens installed in a wall-vent opening. Removable shutters are optional. ~~Ceiling vents are required in the~~ The milk house room shall contain ceiling vents. In the absence of forced draft ventilation, the ceiling vents shall be shafted to a roof peak vent which ~~that shall be~~ is at least 12 inches in diameter and of a height to properly ventilate the room and shall exclude dust, rain, birds, insects and trash. Ceiling vents shall provide high ventilation equivalent to an opening of ~~two percent 2%~~ or more of the floor area. Ceiling vents shall not be installed directly above bulk milk storage tanks. Oil or gas water heaters shall be vented outside above the roof edge.

7. ~~Drainage.~~ Drainage from the milk house room may be connected with the barn drainage or it may be independent. Floor drains shall be vented, have a water trap, and a clean out plug. All floor drains and pipes under milk house and barn floors shall have leak-proof connections and meet all applicable plumbing codes.

8. ~~Painting.~~ All inside walls and ceilings including woodwork shall be painted with a light colored water-proof paint or material acceptable to the Commissioner.

9-7. ~~Tanker loading.~~ --A minimum of A tanker-loading area, at least 10 feet by 12 feet, paved, curbed, and sloped to drain, tanker-loading area shall be provided adjacent to the milk house room where milk is transferred from a farm tank to a milk tanker. If a tanker is used in lieu instead of a farm tank, a suitable shelter must shall be provided and comply that complies with the construction, light, drainage and general maintenance requirements of the milk room with respect to construction, light, drainage, and general maintenance.

10-8. ~~Farm tank installations.~~ --All farm tanks for the cooling and storing of milk shall be installed in the milk room. Bulk milk tanks equipped with approved agitator shaft opening seals may, under certain conditions if approved by the Dairy Supervisor, be bulk headed through a wall if approved by the Commissioner.

~~G-F. Milking barn Parlors.~~

1- ~~All dairies producing Grade A raw milk for Pasteurization shall provide a milking barn which is sound, readily cleanable and of sanitary construction. The building shall afford the proper working space and be constructed to admit sufficient light and ventilation.~~

2-1. ~~Slope and finishes:~~ Floors.

a. The floors, curbs and quarters shall be constructed of 4-inch concrete or other, light colored, impervious material acceptable to the Commissioner finished smooth. The floors and gutters, if of concrete or concrete base, shall be at least 4 inches thick.



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The floors, alleys, gutters, mangers and curbs shall slope lengthwise at least 1 1/2 inches in 10 feet toward a drain or gutter. The cow standing platform in the elevated stall type barn parlor shall slope at least 1 1/2 inches toward the wall floor gutter.

- b. ~~A two-inch minimum radius cove is required at all floor~~ Floor and wall junctions shall have at least a 2-inch radius cove and shall be an integral part of the floor.
- c. ~~The manger, if concrete, and curbs when present, shall be finished smooth with a steel trowel. The cow standing platform litter alley, feed alley and gutter shall be given a true, even surface with a wood float. The cow standing platform, litter alley, holding corral and concrete lane shall be treated to prevent slipping and may be finished either with a suitable instrument, drawn in the direction of both slopes, or treatment of the surface with emery aggregate carbobundum grit or equivalent material. A sand or rock cushion of at least six inches shall be placed under the floor on soils other than sandy loam. Concrete floors placed on soils other than sandy loams shall have a sand or rock cushion at least 6 inches deep.~~
- 3-2. Walls. -- All walls shall be constructed of ~~an a light colored, impervious material and that shall be not less than four extend at least 4 feet in height above the ground floor.~~ All walls shall be finished smooth on the inside with the top ledge rounded on open walls. When a barn parlor wall forms a part of the holding corral or an entrance or exit lane, it shall be finished smooth on the outside. ~~Where~~ When concrete block or masonry construction is used, all voids below the floor line shall be filled with concrete. In elevated stall type barn parlors, the wall under the cow standing platform adjacent to the milker's area shall be finished smooth and designed to prevent drippage.
- 4-3. Plate line. -- The plate line in the floor level milking barn parlor shall ~~not be less than seven at least 7 feet three 3 inches above the floor.~~ In elevated stall-type barn parlors, the plate line shall be ~~not less than six at least 6 feet-six 6 inches above the cow standing platform.~~
- 5-4. Superstructure. -- The exposed superstructure of the barn parlor or ceiling shall be constructed of smooth material. ~~Exposed superstructures shall be such that the~~ The roof sheathing is in an exposed superstructure shall be applied directly to the rafters.
- 6-5. Stalls. -- The cow standing platform and floor level barn parlors shall ~~not be less than three at least 3 feet wide for each cow and shall be at least four 4 feet ten 10 inches and not over six 6 feet from the stanchion line to the gutter, depending on the size of the cattle and the design of the manger.~~ Where When stanchions are not used, the cow standing platform shall be at least seven 7 feet in length. The cow stall in the tandem type elevated stall shall be eight 8 feet in length. The tandem and herringbone stalls shall have a smooth, flat, non-absorbent splash panel behind each cow.
- 7-6. Light and airspace. -- The milking barn parlor shall have at least 400 cubic feet of air space for each stall. Window space, with or without glass, shall be equivalent to at least ~~six percent 6%~~ 6% of the floor area. Light-transmitting material in the roof may be substituted for window

spaces. Artificial light shall ~~not be less than ten at least 30~~ footcandles at the floor level and so located as to minimize shadows in the milking area.

8-7. Alleys.

- a. The litter alley, exclusive of gutter, shall ~~not be less than four at least 4 feet nine 9 inches wide behind a single string of cows.~~ In ~~two a 2-string head-out barns parlor,~~ the litter alley shall be at least eight 8 feet wide between gutters.
- b. In a floor level barn parlor, the feed alley in single and ~~two 2-single head-out types,~~ shall be at least five 5 feet nine 9 inches wide between stanchion line and wall. In ~~two 2-string head-in barns parlors,~~ a minimum of ten there shall be at least 10 feet between stanchions is required.
- c. The milking alley in the ~~two 2-string tandem type elevated stall barn parlor~~ shall be at least eight 8 feet wide but may be reduced to five 5 feet at the narrowest point when automatic feeders are installed and used. The width of the milker's alley in the ~~two 2-string herringbone type barn parlor~~ may be reduced to five 5 feet at the narrowest point.
- d. In the single-string elevated type barn parlor, the milker's alley shall be at least eight 8 feet wide.

9-8. Gutters.

- a. All barn parlors shall have gutters ~~so designed and located to catch the defecation of cows while in the stall and washings of the barn for any water used for rinsing.~~
- b. Gutters in the level floor level type barn parlor may be either the trench or step-off type. The gutter shall be at least 14 inches wide and 2 inches deep at the cow standing platform. The gutter floor shall slope down away from the cow standing platform 1/2 inch across its width. The gutter shall have a uniform depth for its entire length.
- c. The gutters in the elevated stall type barn parlor shall be grate-covered in the stall and trenched types along the outside wall. The stall gutter shall be located to catch defecation of the cow in the stall. It shall be at least 500 square inches in area and at least 20 inches wide and 4 inches deep. The herringbone type barn parlor may have the stall gutter width reduced to 14 inches provided the 500 square inch area per animal is maintained. The wall gutter shall be at least 8 inches wide and 3 inches deep and the bottom may be rounded. Trench gutters may be eliminated in exit alleys if the alleys are curbed and sloped to drain.
- d. Pipe used for barn parlor gutter drainage shall ~~not be less than at least 4 inches in diameter and meet local plumbing codes.~~

10-9. Curbs.

- a. In elevated stall type barn parlors, the cow standing platform shall be curbed on the side next to the milker's alley and the curb shall be at least 6 inches in height with the top rounded ~~and designed to retain the elevated stall floor washings.~~ This curb may be lowered to not less than 2 inches at the area where the milking machines are applied. Metal curbs shall be free of voids and sealed to stall and floor or wall.
- b. In floor level barns, Level floor parlors shall contain a curb under the stanchion line at least 6 inches

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wide, 12 inches high from the stall floor—is required, except where when metal mangers are used; the top of this curb shall be rounded.

**11-10. Stanchions:**

- a. Stanchion ~~The stanchion~~ shall be of metal or other waterproof impervious, easily cleanable material ~~approved by the Commissioner~~. The lower horizontal line of the stanchion shall be at least 2 inches above the curb and at least 14 inches above the floor when no curb is provided.
- b. In floor level type barn parlors, the manger shall have a minimum width of at least 27 inches with a back wall at least 12 inches above the floor; corners rounded; the low point of the manger at least 8 inches out from the stanchion line and 3 inches above the floor with a true lengthwise slope of a minimum of at least 1 1/2 inches in 10 feet toward a drain or gutter. Mangers and feed boxes in all types of barn parlors shall be constructed of impervious materials, finished smooth and provided with drainage outlets at low points.

**12-11. Ventilators: Ventilation.**

- a. Adequate ventilation Ventilation shall be provided in the milking barn parlor, and holding corral/ and wash area, if roofed.
- b. Continuous open (18-inch) ridge vents that rise at least 6 inches above the roof area are acceptable permitted. Any ridge vent continuing over the feed room shall be tightly screened fly tight.
- c. Stack type vents are acceptable. Where this type of When a stack vent is used, provision shall be made for a 12-inch diameter opening on single string barn parlors shall have a 12-inch diameter opening, or a 14-inch diameter opening for and multi-string barn parlors shall have a 14-inch diameter opening with not more than 10 feet between vent and wall, and vent and vent.
- d. When a A flat ceiling is installed, it shall have at least two 2 vents, 2 feet by 2 feet or equivalent, shafted to a roof peak vent which has with not less than a 12-inch opening. The ceiling vents may be located directly in line over the cow standing platform or the milker's pit. The vents shall be located not more than 10 feet between vent and wall, and vent and vent.

**13-13. Barn doors**—The lower half of barn the parlor doors shall be covered on both sides with suitable corrosion-resistant metal.

**H. Painting**—All walls, ceilings and woodwork of barns and milk rooms shall be painted with light colored waterproof paint or materials acceptable to the Commissioner.

**I-G. Roof drainage**—Roof drainage from barn parlors, milk houses rooms or shelters shall not drain into a corral unless the corral is paved and properly drained.

**J-H. Feed storage facilities**—When animals are fed in the milking barn parlor, adequate feed storage facilities shall be provided. Feed storage rooms, when installed, shall be partitioned from the milking barn parlor and shall be fly and rodent proof. The feed discharge area of the bulk feed storage shall be concrete or equivalent, other impervious material that is curbed and drained. Bulk feed may discharge directly into the barn parlor. When a A bulk feed tank is located opposite the passageway, it shall be no closer than 6 feet from the milk house room. Overhead feed storage is permissible if fly, rodent and dust tight. Feed shall be conveyed to the manger or feed box

in a tightly closed dust-free system. Suitable overhead Overhead metal feed tanks may be used.

**K-I. Supply storage**—Facilities to store dairy supplies shall be provided. Only supplies that come in contact with the milk or milk contact surface of the milk handling equipment may be stored in the milk room and shall be protected from toxic materials, vectors, and dust, etc., at all times.

**R3-2-807. Frozen desserts Dessert Plant and Processing Standards**

**A. Definitions.** For the purpose of this part, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

1. "Commissioner" means the State Dairy Commissioner or his authorized representative.
2. "Person" means any individual, partnership, firm, corporation or association.
3. "Plant" means any place, premises or establishment or any part thereof, including specific applicable areas in retail stores, stands, hotels, restaurants and other establishments where frozen desserts are manufactured, processed, assembled, stored, frozen or converted in form for distribution and/or for sale and shall include rooms or space where utensils or equipment are stored, washed or sanitized and where ingredients for use in manufacturing frozen desserts are stored. The term "plant" shall be deemed to include the following:
  - a. "Manufacturing plant" means a plant as defined in this Section in which frozen desserts are manufactured, processed, pasteurized and converted.
  - b. "Handling plant" means a plant as defined in this Section which is not equipped or used for the manufacturing, processing, pasteurizing or converting of frozen desserts, but where frozen desserts are sold or offered for sale other than at retail.
  - c. "Mobile unit" means any vehicle on which frozen desserts are manufactured, prepared, processed, or converted and which is used in selling and dispensing frozen desserts. It shall include temporary buildings which may be moved from place to place.
4. "Mobile unit depot" means a building from which mobile units operate; where such mobile units, equipment and facilities thereof are cleaned and sanitized and where frozen desserts for sale from such mobile units may be handled and stored.
5. "Licensee" means any person subject to license.
6. "C-I-P" means a procedure by which equipment, pipelines and other facilities are cleaned in place in accordance with 3-A Accepted Practices for Permanently Installed Sanitary Product Pipelines and Cleaning Systems.
7. "3-A Standards" are the standards for dairy equipment and accepted practices formulated by the 3-A Sanitary Standards Committee representing the International Association of Milk, Food and Environmental Sanitarians, the U.S. Public Health Service and the Dairy Industry Committee as published by the International Association of Milk, Food and Environmental Sanitarians, Box 701, Ames, Iowa, 50010.
8. "National Sanitation Foundation" means the National Sanitation Foundation, School of Public Health, University of Michigan, Ann Arbor, Michigan, 48106.
9. "Frozen desserts" means ice cream, frozen custard, French ice cream, ice milk, quiescently frozen confection, quiescently frozen dairy confection, French custard

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ice cream, artificially sweetened ice cream, manufactured desserts mix, whipped cream confection, bisque tortoni, sherbets, water ice and mellorine frozen desserts and all such other products, together with any mix used in making such frozen desserts, and any other products which are similar in appearance, odor or taste to such products or are prepared or frozen as frozen desserts are customarily prepared and frozen, whether made with dairy products or non-dairy products.

10. "Converting" or "converted" or "conversion" shall be deemed to mean the process by which a frozen dessert is changed from a frozen to semi-frozen form without any change in the ingredients thereof.
  11. "Frozen desserts mix" or "mix" shall mean any frozen dessert before being frozen.
  12. "Dispensing freezer" means the type of equipment which freezes or partially freezes frozen desserts so they are served in a soft condition for sale to the customer.
- B. Records.** Each licensee shall keep complete and accurate records for each plant operated by him, which shall include the following:
1. Record of receipts and disposition of ingredients.
    - a. Daily record of receipts and disposition of each ingredient other than flavors, cocoa, chocolate, fruits, nuts, malted milk, confectionery, stabilizers, microcrystalline cellulose and sweetening agents.
    - b. For each product containing fat, other than flavoring agents, emulsifiers, stabilizers and confections, the name of the fat and the percent of fat contained therein.
    - c. Monthly inventory of each ingredient for which a record is required pursuant to paragraph (1) of this subsection.
    - d. Name and address of person or company from which ingredients referred to in paragraph (1) were obtained.
  2. Daily record of products manufactured.
    - a. Volume of each frozen dessert manufactured.
    - b. Fat content, if any, of each such frozen dessert manufactured.
  3. Daily record of manufactured products received.
    - a. Volume of each product received, indicating in the case of frozen desserts, the variety, flavor, fat content, etc.
    - b. Name and address of person or persons from whom such manufactured products were received.
  4. Records of bacteriological examination of water supplies, other than those under the supervision of some regulatory agency having jurisdiction over such supplies, used for washing equipment or for use as an ingredient in frozen desserts.
  5. Records of bacteriological tests with respect to quality standards as prescribed.
  6. Recording temperatures, correctly marked as to the date, the product pasteurized, and the name of the responsible person in charge of the pasteurization operation. Facilities shall be provided for checking weekly the accuracy of the recording thermometer and the date and name of the person who checked the thermometer shall be recorded on the chart for that day.
  7. Depot operators shall keep a daily record of the hour during which each mobile unit serviced by him was cleaned and sanitized.
  8. All such records shall be legibly written in the English language, shall be retained at the plant, distribution

depot, or at the local office of the person operating such establishment for a period of at least six months, and shall be available at all reasonable hours for examination.

**C. A. Manufacturing and handling plants and premises Plant and Processing Standards.**

1. Premises. The plant area shall be kept clean, orderly and free from refuse, rubbish, excessive smoke, dust, air pollution and strong or foul odors originating on the premises. A drainage system shall be provided for the rapid drainage of all water away from the buildings. If there are unsatisfactory conditions occur in the plant area, with respect to smoke, dust, air pollution or odors, adequate the licensee shall provision shall be made to protect all the frozen desserts and ingredients thereof from contamination.
2. Sewage and waste disposal. Sewage and industrial wastes shall be disposed of in accordance with the provisions of the state Public Health Law or county environmental regulations. Refuse, unless in suitable appropriate containers, shall not be accumulated accumulate on the premises.
3. Roads, driveways, yards and parking areas adjacent to the plant shall be paved or otherwise treated to prevent dust. They shall be smooth and well drained to prevent accumulation of stagnant liquid.
4. Buildings.
  - a. Construction and maintenance. Buildings shall be of sound construction. The building exterior and interior shall be kept clean and in good repair. They shall be constructed and maintained in such a manner as to give protection against dust, dirt and mold and to prevent the entrance or harboring of insects, vermin, rodents, and other animals.
  - b. Doors, windows and openings. In processing and packaging areas, outside doors, windows, skylights, transoms or other openings shall be properly protected and operated in such a way as to preclude the entrance of dust, insects, vermin, rodents and other animals. Outside doors shall be self-closing wherever practicable practical. Window sills on new construction shall be sloping slope inward at not less than a at least 45-degrees-angle. Outside conveyor openings and other special type outside openings shall be protected by doors, screens, flaps, fans or tunnels. Outside openings for pipeline shall be covered when not in use and service. pipe openings Pipes shall be completely cemented around the pipe opening or have tight metal covers sealed where they extend through exterior walls. Outside pipe openings shall be covered when not in use.
  - c. Care of buildings and plants. Plants where frozen desserts are manufactured, processed, packaged, handled or stored shall be kept clean, well ventilated and free from strong, foul or offensive odors, free from dust, excessive condensate, flies, insects, rodents and other possible sources of contamination.
  - d. Rooms. All rooms, compartments, coolers, freezers, and dry storage space in which any raw material, packaging or ingredient supplies or finished products are handled, processed, manufactured, packaged or stored shall be so designed and constructed as to assure clean and orderly operations.

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- i. ~~Boiler and tool rooms.~~ Boiler and tool rooms shall be entirely separate from rooms where milk products are received or where processing and packaging is done or where equipment, facilities and containers are washed and stored.
- ii. ~~Toilet facilities.~~ Toilets and dressing rooms shall be conveniently located and toilets shall not open directly into any room in which where milk products, ingredients or frozen desserts are handled, processed, packaged or stored. Toilet and dressing room doors shall be self-closing. ~~they~~ Toilets and dressing rooms shall be well vented to the outer air, ~~there and shall be contain~~ hand-washing facilities, hot and cold running water, soap, single-service towels or air dryers; and ~~hand~~ Hand-washing signs shall be posted. Fixtures shall be kept clean and in good repair. Privies and chemical toilets are not permitted.
- iii. ~~Receiving rooms.~~ Rooms for receiving milk and other raw ingredients and materials shall be separated from the processing area by a suitable partition of suitable arrangement of equipment and facilities to avoid contamination of frozen desserts in the processing operations, except that such products in cans or other closed containers may be received and transferred to a cooler or other suitable storage without being received in a separate room.
- iv. ~~Tank truck facilities.~~ If tank truck deliveries of milk, milk products, or frozen desserts mix are made, other than occasional receipts, a tank truck room of sufficient size large enough to accommodate the entire truck shall be provided with suitable equipment and facilities for cleaning. ~~When truck tankers with filter dome vents are used, a~~ A covered outside unloading pad may be used for truck tankers with filter dome vents, provided that there is adequate provision for washing and sanitizing. ~~Facilities for washing and sanitizing tank trucks where there is not~~ If a tank truck room is not located on the premises of an existing plant, adequate facilities for such operations washing and sanitizing tank trucks shall be provided at ~~some other~~ another location where it ~~can be done with protection~~ is free from dust and extreme weather conditions.
- v. ~~Processing and packaging rooms.~~ Except as otherwise provided herein, in this Section, rooms for processing and packaging shall be of adequate size. ~~There~~ Except for existing processing and packaging rooms, there shall be at least 2 3 feet clearance between installations and from the wall to prevent overcrowding and to facilitate cleaning. Existing facilities ~~which do not meet~~ meeting this requirements of this subdivision will be deemed to ~~shall~~ be satisfactory if adequate cleaning can be accomplished to the satisfaction of the dairy supervisor or the dairy supervisor's designee. ~~In any event, all~~ All processing and packaging rooms ~~must~~ shall be equipped with adequate hand-washing facilities including hot and cold running water, soap and single-service towels.
- vi. Refrigeration rooms and units shall be constructed of impervious material and shall be kept clean and sanitary.
- vi-vii. ~~Wholesale manufacturing plant.~~ In a whole-sale manufacturing plant, separate Separate rooms shall be provided so that the manufacturing, processing and packaging ~~may be kept~~ are separate from the cleaning and sterilizing of utensils and containers.
- vii-viii. ~~No person shall reside or sleep in a frozen desserts plant or in any room directly connected with it. No animals shall be kept or allowed~~ permitted in a frozen desserts plant.
- e-d. ~~Walls and ceilings.~~ Walls and ceilings of plants shall be constructed of smooth, tight, washable, ~~hard surfaced~~, impervious material. They shall be light-colored, ~~and shall be kept clean and sanitary and shall be refinished when discolored.~~ A darker color wainscotting of suitable material of darker color may be used to a height not exceeding 60 inches from the floor.
- f-e. ~~Floors.~~ Floors in plants shall be of suitable an impervious, smooth-surfaced material ~~which that~~ can may be flushed clean with water. ~~With the exception of~~ Except for hardening rooms, ~~they~~ floors shall slope 3/16 to 1/4 inch per foot to ~~one~~ 1 or more ~~properly~~ trapped outlets. ~~In~~ No open channel drainage is permitted in new construction or in major alterations extensive remodeling of existing plants, ~~no open channel drainage shall be permitted.~~ Floors of drains are not required in freezers used for storing frozen desserts or frozen ingredients, ~~need not be provided with floor drains, but~~ however the floors shall be sloped to drain to ~~one~~ or more exits at least 1 exit and shall be kept clean. ~~In~~ Floors in new construction or extensive remodeling, the floors shall be joined and coved with the walls to form water-tight joints. ~~Sound, smooth~~ Smooth wood floors may be permitted only in rooms where there will be no spillage of product or ingredients, such as rooms where wrapped or packaged frozen products are packed in multiple-pack containers. Toilets and dressing rooms shall have impervious floors and smooth walls.
- g-f. ~~Plumbing.~~ All plumbing Plumbing shall be so installed as to prevent back-up of sewage or odors into the plant.
- h-g. ~~Ventilation.~~ All rooms and compartments, including storage space for materials, ingredients and packages, and ~~including~~ toilets and dressing rooms, shall be ventilated to maintain sanitary conditions, and to prevent undue condensation, and to minimize or eliminate objectionable odors.
- i-h. ~~Lighting.~~ Lighting, whether natural or artificial, shall be ~~of good quality and~~ well distributed in all rooms and compartments. Rooms where frozen desserts are handled, processed, manufactured or packaged, or where equipment or utensils are washed, shall have at least 30 footcandles of light intensity on all working surfaces; areas where dairy products are examined for condition and quality, shall have at least 50 footcandles of light intensity; and all other rooms, shall have at least ~~five~~ 20 foot-

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candles of light intensity measured 30 inches above the floor. Light bulbs and fluorescent tubes shall be protected so that in the case of breakage there is no possibility of broken glass therefrom falling cannot fall into any product or equipment.

- j-i. ~~Waste.~~ Containers for the collection collecting and holding of wastes other than dry waste paper and other dry packaging materials shall be constructed of metal or other equally impervious material, shall be kept covered with tight-fitting lids or covers, and shall be emptied or otherwise disposed of daily or periodically at least once during the working period. Clothing, tools, equipment, and other material not used in connection with the frozen desserts operations shall not be allowed to accumulate in the work areas or in the storage rooms.
- k-j. ~~Employee facilities.~~ A room or other suitable space shall be provided, separate from any rooms or space where milk products or frozen desserts are received, handled, processed, packaged or stored, shall be provided where employees may change and store clothing. There shall be This area shall contain adequate hand-washing facilities, with hot and cold running water, soap or other detergents and single-service towels or air dryers. There shall be self Self-closing containers shall be provided for used towels and other wastes.
- k-k. ~~Approval of plans.~~ Plans for construction of new plants or major alterations of existing plants shall be submitted to the Dairy Commissioner for approval before construction or alteration is commenced. Any such construction or major alterations shall include anything necessary to comply with the requirements of this part, except that under unusual circumstances, the The Dairy Commissioner Supervisor may use his discretion in modifying allow variances to the requirements of in this part Section, as long as if proper protection is provided for all products handled.
5. Water and steam.
- a. ~~Water.~~ Both hot and cold water of safe and sanitary quality Potable hot and cold water shall be available in sufficient quantity for all plant operations and facilities. Water from other sources may be used for boiler feed and condenser water, if such the water lines are completely separated from the water lines carrying the sanitary potable water supply; and the equipment is so constructed and controlled as to preclude contamination of any product or product contact surface. There shall be no cross connection between safe and unsafe water supplies. Water for washing frozen desserts equipment and utensils and for use in rehydration or as an ingredient in any frozen equipment and utensils and for use in rehydration or as an ingredient in any frozen dessert shall be free from contamination and shall be from inspected and approved sources. If water for washing frozen desserts equipment and utensils and for use in rehydration or as an ingredient in any frozen desserts is obtained from other than a regulated municipal supply, a bacteriological examination shall be made of such the water supply at least once every six 6 months by a qualified bacteriologist to determine purity and safety of the water for use in the frozen desserts operations potability. If

tests indicate any the examination indicates contamination of the water supply, the licensee shall install a device effective procedure for eliminating the contamination shall be installed such as an automatic chlorine feeder.

- b. ~~Steam.~~ In those plants where steam When steam is used, it shall be provided in sufficient volume and pressure for satisfactory the operation of equipment and/or for sterilization, or both. Steam that may come in direct contact with frozen desserts, ingredients, thereof or with the product contact surfaces, shall be culinary steam which complies with the recommended practices for steam of culinary quality as prescribed in "Producing Culinary Steam for Processing Milk and Milk Products," as published by the National Association of Dairy Equipment Manufacturers, Washington, D.C., April, 1963 Appendix H, Part III, Culinary Steam - Milk and Milk Products, of the PMO.
- e. ~~Hot water.~~ Plants shall be equipped to supply an adequate supply of hot running water for cleaning purposes.
6. Equipment and utensils.
- a. ~~Equipment.~~ New equipment shall meet applicable 3-A Sanitary Standards or other recognized standards acceptable to the Dairy Commissioner. All equipment, including connections, coming in contact with frozen desserts or ingredients thereof during processing, manufacturing, handling, or packaging, including connections, shall be constructed of stainless steel or other equally corrosive resistant material. In the case of old equipment or where the use of stainless steel is not practicable, other metals properly coated or plated may be approved temporarily. Such temporary approval shall be only for a period satisfactory to the Dairy Commissioner. No equipment shall be permitted which that is rusted or corroded or in any other condition which that may result in contamination of the frozen desserts. Non-metallic parts having product contact surfaces shall be consist of material that meets 3-A Sanitary Standards for Plastic or Rubber and Rubber-like Materials or shall be of plastic approved by the United States Food and Drug Administration. Equipment, apparatus and piping shall be so designed and installed as to be easily accessible for cleaning and shall be kept in good repair and free from cracks and corroded surfaces. Stationary equipment, including welded sanitary lines and apparatus of such design as that will permit in-place cleaning, may be used when prior approval from the Dairy Commissioner Supervisor has been obtained. Cleaned-in-place C-I-P sanitary piping and welded sanitary pipeline systems will shall be considered acceptable permitted if properly engineered and installed according to 3-A Accepted Practices for Permanently Installed Sanitary Product- and Solution Pipelines and Cleaning Systems. Where When rigid pipelines are not practicable practical, plastic pipelines of approved plastic listed in the 3-A Accepted Practices may be used. Product pumps shall be of a sanitary type and easily dismantled for cleaning or shall be of specifically approved construction constructed to allow cleaning-in-place C-I-P cleaning. All parts of inte-

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- rior surfaces of equipment, pipes (except certain piping cleaned-in-place), or fittings, including valves and connections shall be accessible for inspection. ~~When, in the opinion of the Dairy Commissioner, The Dairy Supervisor may require other equipment, apparatus or piping when stationary equipment, apparatus or piping cannot or is not being effectively cleaned-in-place, he may order the use of other appropriate equipment, apparatus or piping C-I-P cleaned.~~
- b. Equipment for storage and distribution of liquid sweetening agents. ~~Such equipment shall be made constructed of suitable metals, alloys or other material which that will withstand corrosive action by the ingredient. The equipment and the ingredients shall be protected from contamination.~~
- c. Pasteurization equipment. Pasteurizing equipment shall be in accordance with meet the standards prescribed in 3-A Accepted Practices for Sanitary Construction, Installation, Testing and Operation of High-Temperature-Short-Time Pasteurizers and 3-A Sanitary Standards for Non-Coiled Type Batch Pasteurizers. Batch-type pasteurizers shall be provided with flush close-coupled outlet valves protected against leakage and shall be equipped with recording thermometers, ~~which correctly that record each day's operation on separate charts, each day's operation.~~ Air space thermometers are required on all batch pasteurizers. Indicating and indicating thermometers shall also be provided as a means of checking on to check the recording thermometers. Recording thermometer charts shall be The employee responsible for the pasturizing operation shall record the dated, identified with the identity of the pasteurizing number, batch and product, identity, and signed by a responsible official or employee in charge of the pasteurizing operation record made of thermometer checking as provided pursuant to the Dairy Commissioner's requirements and shall be kept sign and keep the record on file at the plant for at least six 6 months. The licensee shall check the accuracy of the thermometer weekly and record the date and name of the person responsible.
- d. Refrigeration equipment. Every frozen desserts plant shall be provided with suitable contain hardening rooms, refrigerating rooms or refrigerated cabinets with adequate space for storage of frozen desserts and perishable ingredients, commensurate with the operations conducted at such plant. Refrigeration rooms and units shall be constructed of impervious material capable of being cleaned and shall be kept clean and sanitary.
- e. Utensils. All utensils used in the receiving, storing, processing, manufacturing, packaging and handling of frozen desserts or any ingredients thereof shall be of smooth, non-absorbent impervious stainless steel, approved or plastic listed in the 3-A Accepted Practices or equally corrosion-resistant material and shall have flush seams. No utensils which that are badly worn, rusted or corroded or which that cannot be rendered clean and sanitary by washing shall be used. No lead solder shall be permitted to come in contact with milk or milk products or frozen desserts.
- f. ~~Equipment and utensils such as freezers, cabinets for the storage or display of frozen desserts and equipment and utensils used in the dispensing and serving of frozen desserts at retail which meet the standards of the National Sanitation Foundation shall be deemed to be satisfactory as to construction and design.~~
7. Cleaning, sanitizing and sterilizing.
- a. Cleaning and sanitizing. Equipment, sanitary piping and utensils used in receiving, storing, processing, manufacturing, packaging and handling frozen desserts and ingredients thereof, and all product contact surfaces of homogenizers, high pressure pumps, and packing glands on agitators, pumps and vats, and lines shall be kept clean. Packing glands on all agitators, pumps and vats shall be inspected regularly and kept clean. Before use, all equipment coming in contact with milk products or frozen desserts shall have an effective a bactericidal; or sanitizing or sterilization treatment. Equipment not designed for C-I-P cleaning shall have been be disassembled, thoroughly cleaned and sanitized. Biodegradable dairy cleaners, wetting agents, detergents, sanitizing agents or other similar material that will not adversely affect or contaminate the frozen desserts or ingredients thereof may be used. Steel wool or metal sponges shall not be used in cleaning of any equipment or utensils having product contact surfaces. C-I-P cleaning shall be used only in the case of on equipment and pipeline systems that are designed, engineered, and installed for that type of cleaning. Applicable equipment and areas in the plant shall be thoroughly vacuumed with a heavy-duty commercial vacuum cleaner or by other effective means and the material thus obtained shall be burned or otherwise disposed of so that any insects are destroyed and milk products and frozen desserts will not be contaminated. Exhaust stacks, elevators and elevator pits, conveyors and similar facilities shall be inspected and cleaned at regular intervals.
- b. Sterilization. Sterilization shall be accomplished by Equipment shall be santized by using one 1 of the following methods:
- i. By the use of hot Contact with 180° F. water which after remaining in contact with equipment for not less than two for at least 2 minutes, has a temperature of not less than 180° F.
- ii. By the use of Using steam under pressure for a period of not less than two at least 2 minutes or until all parts of the equipment being sanitized have reached a temperature of 180° F., or the condensate off the equipment remains at a temperature of not less than 180° F. for at least two 2 minutes.
- iii. By the use of Using chlorine with a residual of not less than at least 50 ppm after one 1 minute contact with equipment, or if sprayed, with a residual of not less than at least 100 ppm after five 5 minutes.
- iv. Other bactericide to be used in a manner approved by the Dairy Commissioner. Any other sanitizing substance prescribed in the USDA List of Proprietary Substances and Nonfood Compounds, January 1, 1995. This



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material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

8. Pasteurization and cooling.

- a. ~~Pasteurization:~~ All frozen desserts mix, with the exception of ~~except for~~ flavoring agents used in frozen desserts, shall be pasteurized.
- b. ~~Pasteurization temperatures:~~ Pasteurization of frozen ~~Frozen~~ desserts mix provided in subsection (A) of this Section shall be done in a plant and with approved equipment conforming to the provisions of this part, pasteurized by heating every particle to:
  - i. ~~To a temperature of at least 155° F. and held at such temperature for at least 30 minutes, or~~
  - ii. ~~To a temperature of at least 160° F. and held at such temperature for at least 15 minutes, or~~
  - iii. ~~To a temperature of at least 165° F. and held at such temperature for at least 10 minutes, or by short term pasteurization with controls approved by the Dairy Commissioner; or~~
  - iv. ~~To a temperature of at least 175° F. and held at such temperature for at least 25 seconds, or~~
  - v. ~~To a temperature of at least 180° F. and held at such temperature for at least 15 seconds, or~~
  - vi. ~~To a temperature of at least 200° F. and held at such temperature for at least three 3 seconds, or~~
  - vii. ~~To a temperature of at least 210° F. with no holding time or to such equivalent temperature and period of holding as the Dairy Commissioner shall approve in writing.~~
- c. High-temperature-short-time pasteurizers shall have the thermal limit controller set and sealed so that forward flow of the product cannot start unless the temperature at the controller sensor is above the appropriate required temperature and so that forward flow of the product cannot continue during descending temperatures when the temperature is below the appropriate required temperature. The seal shall be applied by the Dairy Supervisor or the Supervisor's designee after testing by the Dairy Commissioner and shall not be removed without immediately notifying the Dairy Commissioner Supervisor or the Supervisor's designee. The system shall be so designed so that no product can be bypassed around the controller sensor, which shall not be removed from its proper position during the pasteurization process.
- d. ~~Cooling:~~ After pasteurization all mix shall be cooled immediately to a temperature of not more than 45° F. or less and shall be maintained at a that temperature of not more than 45° F. until subject to freezing. Any milk Milk, cream and other fluid milk products other than sterilized, evaporated or sweetened condensed milk in hermetically sealed containers shall also be stored at temperatures of not more than 45° F. or less. This requirement shall be deemed:
  - i. To require the use of refrigerated Refrigerated vehicles or approved insulated containers shall be used when in transporting frozen desserts mix from the manufacturing or other plant to a retail manufacturers, and

- ii. ~~To apply to conveying mix Mix shall be moved from coolers or refrigeration units in a manufacturing plants to freezers by means of using pipes tubing, or other means approved by the Dairy Commissioner listed in the Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants section of the 3-A Accepted Practices.~~

9. Storage.

- a. Utensils and equipment. Utensils and portable equipment used in processing, handling, or packaging of frozen desserts shall be stored above the floor in clean, dry locations and in self-draining position on racks constructed of impervious, corrosion-resistant material.
  - b. Supplies; and containers, etc. ~~Insofar as Whenever~~ possible, supplies shall be kept in a room separate from ~~rooms where the~~ processing, handling and packaging of frozen desserts and under conditions which ~~that~~ result in keeping such ~~the~~ materials clean, free from dust, moisture, insects, rodents or other possible contamination. Supplies shall be so arranged as to permit cleaning of the area and easy inspection and access. Insecticides and rodenticides shall be plainly labeled, segregated and stored in a separate room or cabinet away from the edible material or packaging supplies. Caps, parchment papers, wrappers, liners, gaskets and single-service sticks, spoons, covers and containers for frozen desserts or their ingredients shall be purchased and stored only in sanitary tubes, wrappings or cartons and ~~shall be kept therein in a clean, dry place until used and shall be handled in a sanitary manner.~~
  - c. Raw milk products. Raw products for use in frozen desserts ~~which that~~ are conducive to bacterial growth shall be handled and stored ~~in such a manner as to minimize bacterial growth.~~ When stored, they shall be maintained at a temperature of ~~50 45°~~ F. or lower until processing commences.
  - d. Non-refrigerated products. Products such as non-fat dry milk and other frozen desserts ingredients ~~which that~~ do not require refrigeration for proper storing shall be placed in dry storage and ~~arranged in such a manner as to be easily accessible for inspection and removal, and to permit for adequate cleaning of the room.~~ Dunnage and pallets shall be used wherever applicable and practical. Frozen desserts or ingredients ~~thereof~~ shall not be stored with any product that would damage them or impair their quality. Opened containers of ingredients shall be protected from contamination.
  - e. Refrigerated products. All products ~~which that~~ require refrigeration shall, except where otherwise specified, be stored under such conditions of temperature and humidity ~~as that~~ will best maintain their quality and condition. Products shall not be stored directly on wet floors or be exposed to foreign odors or conditions such as dripping or condensation that might cause package or product damage.
10. Notification of change in products to be manufactured. ~~When any person who has manufactured only frozen desserts not made with fats other than butterfat desires~~

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~~to manufacture frozen desserts using fats other than butterfat, and when a person who has manufactured only frozen desserts in which no butterfat is utilized wishes to manufacture frozen desserts utilizing butterfat, they shall first notify the Dairy Commissioner. Any person manufacturing only frozen desserts with butterfat, or frozen desserts with fats other than butterfat, wishing to use another type of fat shall first notify the Dairy Supervisor.~~

11. Clearing lines and equipment. When the same equipment is used for the processing, pasteurizing and packaging of frozen desserts made both with dairy products and frozen desserts made with vegetable fats, oils, or proteins, any remaining product shall be completely removed from the lines and equipment ~~or the lines and equipment rinsed with potable water and sanitized before introducing the other product into the lines and equipment,~~ and all All equipment and lines shall be sanitized ~~either at the end of each day's operations or before the beginning of each day's operations.~~
12. Packaging and containers.
  - a. ~~Packaging.~~ Frozen desserts shall be packaged in commercially acceptable containers ~~and using~~ packaging material that will protect the ~~quality of~~ the product ~~and protect it from possible contamination in regular channels of trade.~~ The packaging, cutting, molding, dispensing and other handling or preparation of frozen desserts and their ingredients shall be done in a sanitary manner. Filling of frozen dessert containers shall be done at the place of pasteurization ~~in using approved mechanical equipment,~~ provided, existing manual processes ~~If the processor can show that there is no product contact surface contamination, manual processing may be permitted if done in such a manner as to prevent all contact surface contamination and is approved by the Commissioner.~~
  - b. ~~Containers.~~ Multi-use containers for frozen desserts shall be kept clean and dry. When used for transporting frozen desserts, they shall be rinsed immediately after emptying, ~~shall be cleaned upon return to the plant, and shall be protected from contamination during storage.~~ Metal cans and containers shall be free from rust and corrosion. Paper and plastic containers, liners, covers or other materials coming in contact with frozen desserts shall be so kept, handled, stored and used as to be free from contamination. ~~Single-service containers shall not be reused. Multi-use containers for frozen desserts shall be kept clean and dry. When used for transporting frozen desserts, they shall be:~~
    - i. Rinsed immediately after emptying.
    - ii. Cleaned upon return to the plant, and
    - iii. Protected from contamination during storage.
  - c. Metal cans and containers shall be free from rust and corrosion.
  - d. Paper and plastic containers, liners, covers or other materials coming in contact with frozen desserts shall be free from contamination.
  - e. Single-service containers shall not be reused.

**D-B. Personnel.**

1. Cleanliness.—Plant employees shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking or otherwise soiling their hands. They shall keep their hands clean and

follow good hygienic practices while on duty. Expecto- rating or using tobacco ~~in any form~~ in rooms or com- partments where frozen desserts or ingredients are exposed ~~shall be is~~ prohibited. Clean, white or light-col- ored, washable outer garments shall be worn by all per- sons engaged in handling dairy products, mix or frozen desserts. ~~Suitable hair~~ Hair coverings for head and facial hair shall be worn by all personnel engaged in the pro- cessing, pasteurization ~~pasteurizing~~, packaging, han- dling, and storage of frozen desserts, product containers and utensils.

2. ~~Handling frozen desserts.~~ Frozen desserts shall be han- dled ~~in such a way so~~ that there is no direct contact between the employees' hands and the product itself. Rubber or plastic gloves may be worn.
3. ~~Health.~~ No person afflicted with a communicable dis- ease ~~shall be permitted in any room or compartment where milk products or frozen desserts are prepared, processed, stored, converted or otherwise handled.~~ No person who has a discharging or infected wound, sore or lesion on hands, arms or other exposed portions of the body shall work in any plant processing or packaging rooms or in any capacity resulting in contact with milk products or frozen desserts or equipment used in the processing or handling of milk products or frozen des- serts. An employee returning to work following illness from a communicable disease shall ~~furnish~~ provide a certificate from a physician attesting to ~~his~~ the employee's complete recovery.
4. ~~Carriers.~~ No person who is a "carrier" of a communica- ble disease ~~shall work or be employed in any capacity where frozen desserts are processed, handled, packaged, stored, dispensed or sold.~~

**E-C. Quality standards.**

1. ~~Milk products used in frozen desserts.~~ Milk products used in the manufacture of frozen desserts shall meet the following standards:

| Product           | Standard Plate Count Not to Exceed |
|-------------------|------------------------------------|
| Raw Milk          | 500,000 per ml.                    |
| Pasteurized Milk  | 50,000 per ml.                     |
| Raw Cream         | 500,000 per ml.                    |
| Pasteurized Cream | 100,000 per ml.                    |

2. Butter, 80 percent cream, plastic cream, mixtures of but- terfat, sugar or sweetening agent, moisture and flavor- ing, condensed milk, mixes and all other similar products shall conform to meet the following standards:

| Bacterial Standards  | Not to Exceed                            |
|----------------------|--|
| Standard Plate Count | <del>Not to exceed</del> 50,000 per gram |
| Coliform Count -     | <del>Not to exceed</del> 20 per gram     |
| Yeast—               | <del>Not to exceed</del> 50 per gram     |
| Mold                 | <del>Not to exceed</del> 50 per gram     |
3. ~~Dry whole milk to be U.S. Premium grade or its equiva- lent. Powdered non-fat dry milk, shall meet the require- ments for U.S. Department of Agriculture Extra grade or its equivalent. Dry dry whey, shall meet the require- ments of the U.S. Extra grade or its equivalent. Dry and dry buttermilk shall meet the requirements standards of the U.S. Extra grade or its equivalent.~~
- 2-4. ~~Fats and oils.~~ Fats and oils other than from milk shall ~~conform to the applicable provisions~~ meet the standards of the United States Food, Drug and Cosmetic Act as amended, or those of any applicable state regulations for fats and oils of food grade standards.

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3. ~~Finished products. After pasteurization, frozen desserts or frozen desserts mix shall not contain in excess of 20 coliform per gram and/or in excess of 50,000 plate count of bacteria per gram at any time up to and including time of delivery.~~
4. ~~Method of determination. Bacteria and other counts referred to herein shall be based on recognized standard methods of analysis as prescribed in the latest edition of Standard Methods for the Examination of Dairy Products of the American Public Health Association, Inc.~~
5. ~~Returns. Frozen desserts in broken or opened containers or in containers from which the product has been partially used may be returned to the plant for examination but shall not be used or sold for making frozen desserts.~~
6. All reconstituted frozen desserts shall be pasteurized before packaging.

**F.D. Labeling**

1. ~~Compliance with law. All packages of frozen desserts, including cans or other containers of frozen desserts mix but not including frozen desserts packaged in accordance with a customer's request and in the presence of such the customer, shall be properly except when in conflict with statutes, labeled as prescribed in the federal Food, Drug and Cosmetic Act, as amended.~~
2. ~~Plant of manufacture. In addition to the name and address of packages of frozen desserts, there shall also appear on the package a code number assigned by the Dairy Commissioner or the name and address identifying the plant at which such frozen desserts were manufactured, as follows: Each frozen dessert package shall contain:~~
  - a. The code number assigned by the Dairy Supervisor, identifying the specific manufacturing plant; or
  - b. The name and address of the frozen dessert manufacturer.
  - a. ~~Any person operating more than one plant where frozen desserts are manufactured shall identify the plant of manufacture by means of a code number assigned by the Dairy Commissioner or by the name and address of each plant.~~
  - b. ~~Any person who manufactures frozen desserts for sale in packages bearing the name and address of a person other than the manufacturer shall identify the plant of manufacture by means of a code number assigned by the Dairy Commissioner or by the name and address of each plant.~~
3. ~~Label requirements. Except when in conflict with the statutes, label statements concerning frozen desserts shall be those currently in effect as promulgated pursuant to the federal Food, Drug and Cosmetic Act.~~

**G.E. Dispensing of frozen desserts—License suspension.**

1. ~~Premises. All premises where frozen desserts are dispensed shall be maintained in a clean and sanitary condition and shall comply with the applicable provisions of this Section.~~
2. ~~Protection. Frozen desserts and the equipment, utensils and dishes used in dispensing or serving, together with fruit, flavors, syrups and other items served with frozen desserts, shall be protected from rodents, vermin, flies, insects, dust and all other forms of contamination.~~
3. ~~Cabinets. Frozen desserts cabinets shall be kept clean, sanitary, neat, free from objectionable odor and free from unnecessary utensils, dishes, or other material and products. Such cabinets shall be kept closed except when necessary to remove or replenish supplies of prod-~~

~~uct or when cleaning. The cabinet compartments or receptacle for frozen desserts shall not be used for any other purpose. Multi-use frozen desserts cans shall not be used for any other purpose, other than to store frozen desserts.~~

4. ~~Utensils. Dippers, spoons, scoops and other utensils, containers, or apparatus used for the dispensing of frozen desserts must be kept clean, free from contamination, handled in a sanitary manner, washed in clean hot water containing alkaline detergent or other equivalent material, rinsed in clean water and sterilized by one of the methods prescribed in this Section and if stored, the sterilization shall be performed immediately before reuse, unless stored in such a manner that contamination will not occur. Dippers, scoops, spoons or other dispensing equipment, when used intermittently for serving customers, shall be kept clean, running water between use, provided however, that such dispensing utensils may be kept in the container of frozen dessert which is being dispensed if the handle of the utensil does not touch the product and if it is cleaned and sanitized daily. Badly worn, rusted or corroded utensils, containers, or equipment shall not be used.~~
5. ~~Sale of unprotected frozen desserts. Except when sold for consumption on the premises, frozen desserts sold at retail shall be packaged or wrapped.~~
6. ~~Sales through vending machines. When frozen desserts are sold or dispensed through vending machines, such vending machines, including any labeling on the selector devices, shall clearly and correctly indicate the product or products vended. If more than one product is vended, the names of each product shall be in letters of the same size and style.~~
7. ~~Sales of frozen desserts at retail. When frozen desserts made with fats or proteins, other than from milk, are sold at retail, a sign must be prominently and conspicuously displayed on the sale premises or vehicle, stating "Mellorine Sold Here". The letters in such sign shall be in bold face capitals at least three inches in height and in a contrasting color with the background. In a retail store such sign must be displayed on or over the refrigerated case or cabinet in which such frozen dessert is displayed or offered for sale.~~
8. ~~Vehicles. All vehicles used for the transportation of frozen desserts shall be constructed and operated so as to assure proper temperatures for frozen dairy products and to prevent the contamination of such products. All such vehicles shall be kept in good repair and clean at all times.~~
9. ~~License(s) and/or permits.~~
  - a. ~~No person shall operate a frozen dessert plant without a license(s) or permit from the Dairy Commissioner.~~
  - b. ~~Revocation of license. The Commissioner Dairy Supervisor may suspend the permit license of a frozen dessert plant whenever the bacteria counts, coliform determinations, yeast or mold counts exceed the quality standards for frozen desserts in three 3 out of the last five 5 samples taken on separate days. In addition, the Commissioner Dairy Supervisor may suspend the permit of a frozen dessert plant for failure to comply with any of the provisions of these regulations this Section.~~

**H. Soft-serve frozen dessert stands**

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1. Soft serve frozen dairy desserts shall contain not less than .5% butterfat by weight.
2. Soft serve frozen desserts containing not less than .5% butterfat and not more than 2% butterfat may be sold and advertised as "low fat" frozen desserts.
- I. Reconstitution of frozen soft serve desserts from powdered mixes
  1. Standards: Retail establishments which reconstitute frozen desserts from powdered mixes and dispense the desserts on the premises shall comply with the following minimum standards:
    - a. All powdered mixes used to reconstitute the dessert shall have been pasteurized prior to packaging.
    - b. All water used in the reconstitution of the dessert shall be from a source approved by the Dairy Commissioner or Department of Health.
    - c. All equipment, containers and utensils used in the reconstitution of the dessert shall be made of stainless steel or an equally corrosive-resistant metallic material and shall meet 3-A standards; no plastic equipment, containers or utensils may be used.
    - d. The retail dispensing establishment shall have at least one triple compartment sink suitable for the washing and sanitizing of all equipment and containers.
    - e. All equipment, containers and utensils shall be washed and air dried after each use and shall be sanitized before each use, in accordance with the sterilization standards set forth in subparagraph (C)(7)(b) of this regulation.
    - f. When not in use, all equipment, utensils and containers shall be stored above the floor in a clean, dry location free from dust, moisture, insects, rodents or other possible sources of contamination.
    - g. The amount of frozen dessert reconstituted from the powdered mix at any time shall be limited to the capacity of the dispensing equipment; excess quantities of the dessert may not be made in advance and stored outside of the dispensing machine.
    - h. Frozen desserts shall be reconstituted in strict accordance with the directions provided by the manufacturer of the powdered mix.
    - i. In addition to the foregoing standards, dispensing establishments shall comply with the requirements set forth in paragraphs (C)(1) through (C)(7), (C)(9) through (C)(12), subsections (D), (E), (F), and (G) of this regulation. Where there is any conflict between the foregoing provisions and the requirements set forth in this Section, the requirements of this Section shall control.
  2. Enforcement: The Dairy Commissioner may suspend the license of any establishment which violates any of the provisions of this Section.

**R3-2-808. Frozen Desserts Reconstituted From Powdered Mixes**

Except for R3-2-807(B)(8), retail establishments that reconstitute frozen desserts from powdered mixes and dispense the desserts on the premises shall comply with the requirements prescribed in R3-2-807 and the following standards:

1. All equipment, containers and utensils shall be washed and air dried after each use and shall be sanitized before

each use, in accordance with the sterilization standards established in subsection R3-2-807(B)(7)(b).

4. When not in use, all equipment, utensils and containers shall be stored above the floor in a clean, dry location free from dust, moisture, insects, rodents or other possible sources of contamination.
5. Excess quantities of the reconstituted frozen dessert shall not be made from the powdered mix in advance and stored outside the dispensing machine.
6. Frozen desserts shall be reconstituted according to the directions provided by the powdered mix manufacturer.

**R3-2-808. to R3-2-809. Medicinal, chemical Chemical and radioactive Radioactive residues Residues in milk Milk**

**A. Preventing medicinal, chemical and radioactive residues:** All dairies shall comply with the following minimum procedures to exclude medicinal, chemical and radioactive residues from milk intended for human consumption:

1. Identify all cows which that have been treated with or which have consumed medicinal, chemical and radioactive agents capable of being secreted in milk;
2. Maintain a written record of the date of treatment, type and quantity of the medicine or chemical administered to each cow;
3. Milk all such treated cows last, or with separate equipment to prevent contamination of the wholesome milk supply;
4. Effectively clean Clean and sanitize all equipment, utensils and containers used in the handling of milk from such the treated cows; before such the equipment is used in the handling of any milk intended for human consumption; and
5. Discard all milk from such the treated cows for the period of time recommended by the attending veterinarian or as indicated on the package or label of the medicine used in the treatment of the animal.

**B. Enforcement**

1. When the residue of any a chemical, medicinal or radioactive agent is found in the milk of a dairy and the State Dairy Commissioner Supervisor determines that such the residue may be deleterious to human health, the Commissioner Director shall immediately suspend such the dairy from further selling, offering for sale or distributing milk for human consumption until:
  - a. The Commissioner Dairy Supervisor has determined that the practices causing the contamination of the milk have has been corrected and the dairy is in compliance with the procedures set forth established in subsection (A) of this regulation;
  - b. Any milk which that has not been excluded from human consumption as required by subsection (A) of this regulation is appropriately discarded; and
  - c. The first milk shipment following suspension indicated negative test results for medicinal, chemical or radioactive residues.
2. If at any time the State Dairy Commissioner Supervisor determines that a dairy is not in compliance with the procedures set forth established in subsection (A) of this regulation, the Director may suspend the dairy may be suspended until such time—as the prescribed procedures are observed.Section

## NOTICE OF PROPOSED RULEMAKING

### TITLE 3. AGRICULTURE

#### CHAPTER 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION

#### PREAMBLE

1. **Sections Affected:**

|           |  |
|-----------|--|
| R3-3-1001 | <b><u>Rulemaking Action:</u></b> Amend |
| R3-3-1002 | New Section                            |
| R3-3-1003 | Repeal                                 |
| R3-3-1002 | Renumber                               |
| R3-3-1003 | Amend                                  |
| R3-3-1004 | Amend                                  |
| R3-3-1005 | Repeal                                 |
| R3-3-1005 | New Section                            |
| R3-3-1006 | Repeal                                 |
| R3-3-1006 | New Section                            |
| R3-3-1007 | Repeal                                 |
| R3-3-1007 | New Section                            |
| R3-3-1008 | Repeal                                 |
| R3-3-1008 | New Section                            |
| R3-3-1009 | New Section                            |
| R3-3-1010 | New Section                            |
| R3-3-1011 | New Section                            |
2. **The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 3-107

Implementing statute: A.R.S. § 3-3105, 3-3106, 3-3108, 3-3113, and 3-3114
3. **The name and address of the agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Shirley Conard, Rules Specialist

Address: Arizona Department of Agriculture  
1688 West Adams, Room 124  
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420
4. **An explanation of the rules, including the agency's reasons for initiating the rules:**

In 1991, HB 2416, (A.R.S. §§ 3-3106, 3-3108 and 3-3109) mandated that the enforcement authority for the worker safety rules, previously administered by the Industrial Commission of Arizona, Department of Occupational Safety and Health (ICA/ADOSH), be transferred to the Arizona Department of Agriculture. While these rules provide adequate standards for monitoring worker protection for agricultural pesticides, the 1990 Auditor General's Performance Audit of the enforcement of the ICA/ADOSH pesticide worker safety rules, and the EPA proposed Worker Protection Standards (WPS) for Agricultural Pesticides indicate that more specific guidelines are necessary to effectively implement the WPS rules and statutes.

In 1992, the Department began working to update the worker safety rules and held meetings with the agricultural industry and various affiliated organizations. During this time the EPA proposed federal regulations governing worker protection standards for agricultural pesticides. The Department expected these standards to become final in late 1992 or early 1993.

When it became apparent that the EPA was not going to meet the deadline and because certain issues, such as reentry intervals, personal protective measures, notification and posting, and medical monitoring and medical care, were being discussed nationwide, the Department, the agricultural industry, and various affiliated organizations collectively decided to suspend discussions on the rules until EPA completed the comment period and finished the rulemaking process.

The final portions of the EPA WPS became effective July 17, 1995. The Department again began comparing the federal standards to state standards, drafted rules, and holding meetings at which representatives of agri-labor and agri-business discussed acceptable worker protection standards that would, in large part, reduce the exposure of agricultural workers to pesticides and pesticide residue.

R3-3-1002. Worker Protection Standards Authority. The EPA revisions expand the scope of the standards to include not only workers performing hand labor, but persons who handle, mix, load, and apply pesticides in locations where hand labor is being performed. The EPA rule also expand requirements for warning and notification of pesticide applications, personal protective

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equipment, reentry restrictions, and add provisions for decontamination, emergency medical information and transportation, monitoring handlers of highly toxic pesticides, and appropriate training.

After comparing the federal WPS with Department rules, except for two other areas, Department rules were not as comprehensive as EPA standards. Therefore, excluding the training standards, the Department incorporates by reference the federal Worker Protection Standards.

Besides training, the state proposed rules are more stringent than federal standards in two areas: (1) employer notification to a farm labor contractor of the areas being treated or that have been treated with a pesticide for which the reentry interval has not expired; and (2) requiring containers used to apply pesticides be equipped with covers that prevent splashes and spills.

R3-3-1003. Pesticide Safety Training. Although the proposed rule appears to have considerable changes, most of the changes deal with arranging the information in a logical order. Any additional information consists of federal requirements that pertain to the training program.

R3-3-1004. Farm Labor Contractor Oral Notification. The notification provisions in the federal WPS address the working conditions of two types of employees: workers, who handle agricultural pesticides (mix, load, apply, clean or repair equipment, act as flaggers, etc.) and handlers, who perform tasks related to the cultivation and harvesting of plants on farms or in greenhouses, nurseries, or forests. There are three types of provisions intended to: (1) Eliminate or reduce pesticide exposure; (2) mitigate actual pesticide exposures; and (3) inform employees about pesticide hazards.

EPA standards concerning provision (3), require an employer to inform workers of the pesticide location treatment areas on an agricultural establishment, helping workers avoid exposure to the areas. Because employees may report to work from different locations at different times of the day, e.g., coming from on-farm camps, local housing, or being bused from cities or other farms, the employer does not always see the workers before they enter a field. This rulemaking requires an employer to inform the farm labor contractor of the location of the agricultural establishment's central posting site, or of restrictions on entering the treated area, and clarifies responsibilities for employee notification.

R3-3-1005. Tanks Using Toxicity Category I or Restricted Use Pesticides. The current R3-3-1007 establishes the requirements for personal protective equipment (PPE). Except for information relating to containers, PPE is thoroughly covered in the federal standards. This new Section retains container requirements currently in R3-3-1007(J) and adds the requirement of water supply protection from back-siphoning pesticide mixtures.

R3-3-1006. Agricultural Emergency. This Section discusses an agricultural emergency and establishes the information required for the Department to consider the emergency. If workers need to enter an area before the expiration of a restricted-entry interval to perform tasks, including hand labor tasks, a grower may obtain permission, in advance, from the Department. An emergency may consist of: unexpected, severe weather, including frost, high winds, tornados, or a severe pest outbreak immediately before harvest of a time-sensitive crop, including the soft fruits, soft vegetables, or floral crops. If an emergency is anticipated through a weather forecast, pest outbreak bulletin, or other warning, an employer may not apply a pesticide after notice of the emergency, and then due to the emergency, require workers to enter the treated area before the restricted-entry interval has expired.

R3-3-1008 through R3-3-1011. sets up the parameters for assessing civil penalties with respect to the gravity of the violation (A.R.S. § 3-3113(I)) by using criteria established in OSHA standards and in A.R.S. § 3-3113.

The following information provides the determinations for worker protection safety cases during the last five years. Individual cases may contain from 0 to 6 violations per case, but not all cases include evidence to confirm each violation, nor will each violation warrant a tangible resolution. The non-violative category means that no evidence existed to prove the violation. Examples of non-violative are: complainant unwilling to cooperate, violation is not pesticide related, worker got dust in eye - no pesticide violation, non crop application, and discrepancies found during inspection.

- In 1993, the Department opened 15 worker protection safety cases. Of the following violations, 6 dealt with suspected exposure:
  - 5 - Failure to Train
  - 8 - No PPE Available
  - 1 - Restricted Entry Interval
  - 3 - Labeling

The resolution of those cases were as follows:

- 2 - Insufficient information existed to make a determination
- 1 - Too long a period of time occurred between incident and report to make a determination
- 1 - Case referred to tribal authority
- 3 - Non-violative
- 6 - DeMinimus
- 2 - Non Serious
- Total fines paid in 1993 were \$700.



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- In 1994, the Department opened 6 worker protection safety cases. Of the following violations, 5 dealt with suspected exposure:

- 2 – No PPE Available

The resolution of those cases were as follows:

- 3 – Insufficient information existed to make a determination

- 1 – Non-violative

- 2 – DeMinimus

Total fines paid in 1994 were \$0.

- In 1995, the Department opened 23 worker protection safety cases. Of the following violations, 9 dealt with suspected exposure:

- 6 – Failure to Verify Training

- 10 – Failure to Train

- 6 – No PPE Available

- 1 – Failure to Issue Worker/Handler Cards

- 3 – Restricted Entry Internal

- 1 – Not Wearing PPE

- 1 – No Application List

- 5 – No Safety Poster

- 10 – Label Violation

- 2 – Change Site/Clothes

The resolution of those cases were as follows:

- 3 – Complete case records cannot be found to determine the final result

- 7 – Non-violative

- 13 – Warning Letters

- 3 – DeMinimus

- 16 – Non Serious

- 1 – Serious

Total fines paid in 1995 were \$7,020.

- In 1996, the Department opened 26 worker protection safety cases. Of the following violations, 2 dealt with suspected exposure:

- 6 – Training Records

- 1 – No Worker Card

- 7 – No Handler Card

- 2 – Failure to Verify Training

- 12 – Failure to Train

- 7 – Failure to Issue Cards

- 5 – No PPE

- 5 – No Application List

- 1 – Restricted Entry Internal

- 8 – No Decontamination Site

- 11 – No Medical Information

- 5 – No Safety Poster

- 4 – Label Violation

- 3 – Change Site/Clothes

The resolution of those cases were as follows:

- 4 – Appropriate notification not given/case closed

- 1 – Time expired for making a determination

- 20 – Non-violative

- 13 – Warning Letters

- 7 – DeMinimus

- 5 – Non Serious

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1 – Serious

Total fines paid in 1996 were \$1,830.

- In 1997, the Department opened 19 worker protection safety cases.

1 – No Handler Card

10 – Failure to Verify Training

12 – Failure to Train

2 – No Sign

5 – No PPE Available

9 – No Decontamination Site

1 – No Application List

9 – No Medical Information

1 – No Safety Poster

14 – Label Violation

4 – Change Site/Clothes

8 – Agricultural Safety Compliance

5 – Disposal and storage

1 – Safe Environment

The resolution of those cases were as follows:

1 – No relation to pesticide issues/case closed

1 – Non-violative

3 – Warning Letters

18 – Non Serious

Total fines paid in 1997 were \$7,660.50.

5. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state.

Not applicable.

6. The preliminary summary of the economic, small business, and consumer impact:

This rulemaking clarifies the current EPA worker protection standards that became final July 17, 1995. The standards on reentry intervals, personal protective measures, notification and posting, medical monitoring and medical care are required by federal rules. Even though the Department anticipates this rulemaking will have an impact on small business, the Department does not expect the impact will have a disproportionate or unfair effect.

- A. *Estimated Costs and Benefits to the Arizona Department of Agriculture.*

The changes create no additional reporting or inspection responsibilities on the agency. Because civil penalties are formulated with respect to the gravity of the violation, the new Sections do not create additional procedures for implementation. No additional costs will be incurred by the Department.

- B. *Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this proposed rulemaking.

- C. *Businesses Directly Affected By the Rulemaking.*

Estimated Costs and Benefits to growers, workers, handlers, and WPS training instructors:

Although this rulemaking does not include major changes in the training and notification Sections, minor changes in these two areas affect and, in this case reduce, the number of exposure of pesticide handlers and field workers to pesticide products and residues. The benefits to these groups include a reduction in lost time from the work force, reduction of medical expenses, increased productivity from a workforce less affected by pesticide poisoning, reduction of the possibility of accidental death from exposure to pesticides, and reduction of the elapsed time from pesticide exposure to the time medical treatment is received. These benefits are difficult to quantify due to the lack of specific pesticide-related injury/illness statistics, but minor changes in these rules will have a positive impact on these types of benefits for the agricultural employee.

The EPA estimates that tens-of-thousands of acute illnesses and injuries and an unknown number of delayed-onset illnesses occur annually to agricultural employees in the United States as the result of occupational exposure to pesticides used in the production of agricultural plants. These injuries and illnesses continue to occur despite the protections offered by the WPS and by product-specific regulation of pesticides.

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According to the 1997 Pesticide Poisoning Surveillance Annual Report, published by the Epidemiology and Disease Control Office of Environmental Health, Arizona Department of Health Services, two occupational agriculture-related illness reports were received in 1997, as required by A.R.S. § 36-606. The number of telephone calls reporting pesticide exposure, or pesticide questions and concern are: 0 definite cases, 2 probable cases, and 0 possible cases, related to agricultural employment were determined.

The Arizona State Monitor Advocate Office of the Department of Economic Security and Employment Services Administration estimates that the number of migrant-seasonal farm workers in Arizona exceeds 90,000, (includes documented farm workers and their families). The Pesticide Poisoning Surveillance Annual Report noted that the exposure rates from the pesticide handler/user occupations are not greater than those for the nonpesticide occupations.

Pesticide-provoked illnesses mimic many medical conditions, making chronic cases difficult to diagnose. In addition to the number of poisonings for which medical treatment is sought, there are numerous instances where pesticide provoked symptoms are not treated by a physician. Symptoms of pesticide poisoning include headaches, muscle aches, and fatigue.

The following information, provided by the Arizona Department of Economic Security Research Division, shows that approximately 861 agricultural industry employers in Arizona were affected by this rulemaking during the 1st quarter of 1997. Additionally, these affected employers employ approximately 30,771 workers.

**ARIZONA AGRICULTURE**  
**1st quarter 1997**

| SIC # | INDUSTRY  | ESTABLISHMENTS | EMPLOYEES |
|-------|---|----------------|-----------|
| 0111  | Wheat   | 7              | 30        |
| 0119  | Cash Grains (Not Elsewhere Classified)                          | 5              | 46        |
| 0131  | Cotton  | 294            | 2,785     |
| 0134  | Irish Potato  | 6              | 109       |
| 0139  | Field Crops (Except Cash Grains) 81<br>Not Elsewhere Classified |                | 765       |
| 0161  | Vegetables & Melons   | 83             | 4,423     |
| 0172  | Grapes  | 7              | 381       |
| 0173  | Tree Nuts   | 11             | 404       |
| 0174  | Citrus Fruits 31739   |                |           |
| 0175  | Deciduous Tree Fruits   | 8              | 163       |
| 0179  | Fruits & Tree Nuts - (Not Elsewhere Classified)                 | 5              | 33        |
| 0181  | Ornamental Floriculture & Nursery Products                      | 36             | 1,024     |
| 0191  | General Farms, Primarily Crop                                   | 9              | 160       |
| 0711  | Soil Preparation Services                                       | 9              | 58        |
| 0721  | Crop Planting, Cultivating & Protecting                         | 43             | 233       |
| 0722  | Crop Harvesting, Primarily by Machine                           | 58             | 3,895     |
| 0723  | Crop Preparation Services for Market, Except Cotton Gins        | 66             | 3,897     |
| 0761  | Farm Labor Contractors & Crew Leaders                           | 86             | 10,162    |
| 0762  | Farm Management Services  | 16             | 1,464     |
|       | 1st QUARTER TOTAL   | 861            | 30,771    |

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Standard Industry Classification (SIC) is the statistical classification standard for all establishment-based Federal economic statistics classified by industry.

**D. *Estimated Costs and Benefits to Private and Public Employment.***

Although the rules apply equally to public employees, including universities and colleges, and private sector employees, costs are expected to be minimal because public agencies are expected to have a knowledge of pesticides and to have appropriate equipment as required by the pesticide label. Indigent health care systems, training and medical care provisions may reduce costs borne by AHCCCS and other health care providers.

**E. *Estimated Costs and Benefits to Consumers and the Public.***

This rulemaking will have no impact on consumers or the public.

**F. *Estimated Costs and Benefits to State Revenues.***

This rulemaking will have no impact on state revenues.

**7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Shirley Conard, Rules Specialist  
Address: Arizona Department of Agriculture  
1688 West Adams, Room 124  
Phoenix, Arizona 85007  
Telephone: (602) 542-0962  
Fax: (602) 542-5420

**8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

Date: August 12, 1998  
Time: 10:00 a.m.  
Location: Arizona Department of Agriculture  
1688 West Adams, Room 206  
Phoenix, Arizona 85007  
Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 4:00 p.m., August 13, 1998. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Department's coordinator, Patrick Stevens, (602) 542-4316 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

**9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules.**

None.

**10. Incorporations by reference and their locations in the rules:**

R3-3-1002. Except 40 CFR 170.130 and 170.230, Worker Protection Standards, 40 CFR 170, as amended June 26, 1996.

**11. The full text of the rules follows:**

**TITLE 3. AGRICULTURE**

**CHAPTER 3. DEPARTMENT OF AGRICULTURE - ENVIRONMENTAL SERVICES DIVISION**

**ARTICLE 10. AGRICULTURAL SAFETY**

**Section**

R3-3-1001. Definitions  
R3-3-1002. Worker Protection Standards  
R3-3-1003. Medical monitoring and medical care  
R3-3-1002. R3-3-1003. Pesticide Safety Training  
R3-3-1004. Notification and posting Requirements for Farm Labor Contractors  
R3-3-1005. Reentry Intervals  
R3-3-1005. Container Used For Mixing or Applying Pesticides  
R3-3-1006. Decontamination and washing facilities  
R3-3-1006. Agricultural Emergency

~~R3-3-1007. Personal protective measures~~  
~~R3-3-1007. Violations and Civil Penalties~~  
~~R3-3-1008. Employees working alone; conditions~~  
~~R3-3-1008. Penalty Adjustments~~  
~~R3-3-1009. Failure to Abate~~  
~~R3-3-1010. Calculation of Additional Penalties For Unabated Violations~~  
~~R3-3-1011. Repeated or Willful Violations~~

**ARTICLE 10. AGRICULTURAL SAFETY**

**R3-3-1001. Definitions**

In addition to the definitions set forth in A.R.S. § 3-3101, the following terms apply to this Article:

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1. "Agricultural emergency" means a sudden occurrence or set of circumstances that:
  - a. An agricultural employer could not have anticipated and over which the agricultural employer has no control, and
  - b. Requires entry into a treated area during a restricted-entry interval, and
  - c. No alternative practices would prevent or mitigate a substantial economic loss.
- 1-2. "Agricultural employer" means any person, including a farm labor contractor, who hires or contracts for the services of workers for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner of, or is responsible for, the management or condition of an agricultural establishment that uses such agricultural workers.
- 2-3. "Agricultural establishment" means any farm, forest, nursery, or greenhouse using pesticide products which that are required by label to be used in accordance with the federal worker protection standards. An establishment is exempt from the requirements of this Article if the establishment uses only that restricted products that do not have a federal worker protection statement on the label is exempt from the requirements of this Article.
- 3-4. "Agricultural plant" means any plant grown or maintained for commercial or research purposes and includes food, feed, and fiber plants; trees; turfgrass; flowers, shrubs; ornamentals; and seedlings.
4. "Carbamate pesticides" means esters of N-methyl carbamic acid which inhibit cholinesterase.
5. "Chemical-resistant" means a material which allows no measurable movement of pesticide through the material during use.
- 6-5. "Chemigation" means the application of pesticides through irrigation systems.
7. "Closed system" means any method that eliminates open atmospheric contact with a pesticide or its rinse solution, if any, during transfer from the original container to the application equipment or system.
8. "Commercial pesticide handling establishment" means any establishment, other than an agricultural establishment, that:
  - a. Employs any person, including a self-employed person, to apply on an agricultural establishment, pesticides used in the production of agricultural plants.
  - b. Employs any person, including a self-employed person, to perform on an agricultural establishment, tasks as a pest control advisor.
- 5-6. "Consultation" means an on-site visit by, or a response to, an inquiry from the Agricultural Consulting and Training program personnel, pursuant to A.R.S. 3-109.01, to review agricultural practices and obtain documented non-regulatory advice to help ensure compliance with the issues addressed.
9. "Disposal" means the discarding of a pesticide container which results in the deposit, dumping, burning, or placing of the container into or on any land or water.
7. "De minimis violation" means a condition or practice which, although undesirable, has no direct or immediate relationship to safety or health. A.R.S. § 3-3101(2)
- 10-8. "Early entry" means any worker or handler entering the a treated area after a pesticide is applied to a location on the agricultural establishment and prior to before the expiration of the restricted-entry interval.
11. "Farm" means any operation, other than a nursery or forest engaged in the outdoor production of agricultural plants.
9. "Farm labor contractor" means any person who hires or contracts for the services of workers for any type of compensation, to perform activities related to the production of agricultural plants, but does not own or is not responsible for, the management or condition of an agricultural establishment.
- 12-10. "Flagger" means a person who indicates an aircraft spray swath width from the ground.
13. "Forest" means any operation engaged in the outdoor production of any agricultural plant to produce wood fiber or timber products.
14. "Greenhouse" means any operation engaged in the production of agricultural plants inside any structure or space that is enclosed with nonporous covering and that is of sufficient size to permit worker entry. This term includes polyhouses, mushroom houses, rhubarb houses, and similar structures. It does not include such structures as malls, atriums, conservatories, arboretums, or office buildings where agricultural plants are present primarily for aesthetic or climatic modification.
11. "Gravity based penalty" means an unadjusted penalty calculated for each violation, or combined or grouped violations, by adding the gravity factor to the other penalty factors.
15. "Handle" means any activity involving contact with pesticides as a result of:
  - a. Mixing, loading, transferring or applying pesticides;
  - b. Working as a flagger for an aerial pesticide application crew;
  - c. Disposal of pesticide containers; or
  - d. Working with contaminated equipment. This definition does not apply to employees who transport pesticides in unopened containers.
- 16-12. "Handler" means any person, including a self-employed person:
  - a. Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment to which this Article applies and who is doing does any of the following:
    - i. Mixing, loading, transferring, or applying pesticides;
    - ii. Disposing of pesticides, or non-triple rinsed or equivalent pesticide containers;
    - iii. Handling opened open containers of pesticides;
    - iv. Acting as a flagger;
    - v. Cleaning, adjusting, handling, or repairing the any parts of mixing, loading, or application equipment that may contain pesticide residues;
    - vi. Assisting with the application of pesticides;
    - vii. Entering a greenhouse or other enclosed area after the pesticide application and before either the inhalation exposure level listed in the labeling has been is reached or one any of the ventilation criteria established by either in R3-3-1002 or in the labeling has been met to do any of the following:
      - (1) To operate ventilation equipment;
      - (2) To adjust or remove coverings used in fumigation; and

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- (3) To monitor air levels.
- viii. Entering a treated area outdoors after pesticide application of any soil fumigant to adjust or remove soil coverings such as tarpaulins.
- ix. Performing tasks as a pest control advisor:
- (1) During any pesticide application.
  - (2) Before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by R3-3-1002 or in the labeling has been met.
  - (3) During any restricted entry interval.
- b. The term handler does not include:
- i. Any person who is only handling handles only pesticide containers that have been are emptied or cleaned according to pesticide product labeling instructions or, in the absence of such labeling instructions, have been subjected to triple rinsing are triple-rinsed or its equivalent;
  - ii. Any person who is only handling handles only pesticide containers that are unopened and is not at the same time also doing a handling task; or
  - iii. Any person who will be repairing, cleaning, or adjusting repairs, cleans, or adjusts the pesticide application equipment at an equipment maintenance facility, after the equipment is decontaminated, and is not an employee of the handler employer.
- 17-13. "Handler employer" means any person who is self-employed as a handler; or who employs any a handler, for any type of compensation.
14. "Nonserious violation" means a condition or practice in a place of employment which does not constitute a serious violation but which violates a standard or rule and has a direct or immediate relationship to safety or health, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the condition or practice. A.R.S. § 3-3101(6)
18. "Nursery" means any operation engaged in the outdoor production of any agricultural plant to produce cut flowers and ferns or plants that will be used in their entirety in another location. Such plants include flowering and foliage plants or trees; tree seedlings; live Christmas trees; vegetable, fruit, and ornamental transplants; and turfgrass produced for sod.
19. "Organophosphorous pesticides" means cholinesterase inhibiting compounds containing the elements of carbon and phosphorus.
20. "Owner" means any person who has a present possessory interest (fee, leasehold, rental, or other) in an agricultural establishment covered in this Article. A person who has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this Article.
- 21-15. "Personal protective equipment" means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.
16. "Pest control advisor" means a crop advisor, as defined in 40 CFR 170, who assesses pest numbers or damage, pesticide distributions, or the status or requirements to sustain the agricultural plants. The term does not include a person who performs hand-labor tasks or handling activities.
- 22-17. "Pesticide" means:
- (a) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
  - (b) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant. A.R.S. § 3-341(21)
23. "Reentry interval" means the period of time after a pesticide application during which entry into the treated area is restricted, including at a minimum the time required for sprays to dry, dusts to settle and vapors to disperse.
- 24-18. "Restricted entry interval" means the time after the end completion of a pesticide application during which entry into the a treated area is restricted as indicated by the pesticide product labeling label.
19. "Restricted use pesticide" means a pesticide classified as such by the United States Environmental Protection Agency. A.R.S. § 3-361(8)
20. "Serious violation" means a condition or practice in a place of agricultural employment which violates a standard or rule or section 3-3104, subsection (A) and produces a substantial probability that death or serious physical harm could result, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of such condition or practice. A.R.S. § 3-3101(10).
21. "Substantial economic loss" means a loss in yield greater than expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by an agricultural emergency specific to the affected site and geographic area are considered. The contribution of mismanagement is not considered in determining the loss.
25. "Toxicity Category I," "Toxicity Category II," "Toxicity Category III," and "Toxicity Category IV" are defined by 40 CFR 156.10(h)(1), as set forth in 40 CFR 150 to 189, revised as of July 1, 1988, pages 81 and 82, which is incorporated herein by reference and on file and available for review with the Office of the Secretary of State.
- 26-22. "Treated area" means any area to which a pesticide is being directed or has been directed.
- 27-23. "Worker" means any person, including a self-employed person, who is employed for any type of compensation and who is performing performs activities relating to the production of agricultural plants on an agricultural establishment to which this Article applies. While persons The requirements of this Article do not apply to any person employed by a commercial pesticide-handling establishment are performing who performs tasks as a pest control advisors, they are not workers covered by the requirements of this Article.
- R3-3-1002. Worker Protection Standards**
- A. Except 40 CFR 170.130 and 170.230, Arizona shall comply with the worker protection standards prescribed in 40 CFR 170, as amended June 26, 1996. This material is incorporated by reference, on file with the Office of the Secretary of State



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and does not include any later amendments or editions of the incorporated matter.

- B.** When the provisions of 40 CFR 170 are inconsistent with this Article, the provisions of this Article shall apply.

**R3-3-1003. Medical monitoring and medical care**

- A.** ~~For all activities involving the use of pesticides, the employer shall make prior arrangements for emergency medical care and shall post in a prominent place at the worksite the name, address and telephone number of the physician, clinic or hospital emergency room providing such emergency medical care.~~
- B.** ~~If the employer has reasonable cause to believe that an employee has a pesticide illness or has been exposed to a pesticide that can reasonably be expected to lead to an employee's illness, the employer shall ensure that the employee is immediately transported for emergency medical care.~~
- C.** ~~The employer shall provide pre-exposure baseline cholinesterase tests for pilots, mixer/loaders and any other employees who are expected to handle any pesticide product with the signal word "DANGER" or "WARNING" on the label and which contain organophosphorous pesticides in other than their original, sealed containers for 30 hours or more in a 30-day period.~~

**R3-3-1002. R3-3-1003. Pesticide Safety Training**

- A.** Pursuant to subsection (H), the agricultural employer shall assure that each worker has received pesticide safety training during the last five years, counting from the end of the month in which the training was completed.
- A.** Any worker or handler who meets any of the following requirements is exempt from this Section:
1. A handler who is currently certified as an applicator of restricted use pesticides, under R3-3-207 or R3-3-208;
  2. A worker who is currently certified as an applicator of restricted use pesticides, under R3-3-207 or R3-3-208, or who holds a current handler card;
  3. A worker or handler certified as a trainer in accordance with this Section;
  4. A worker or handler who is certified or licensed as a crop advisor by a program approved in writing by the Environmental Protection Agency or the Department.
- H. B. Verification of training by the agricultural employer or handler employer. Training verification.**
1. Before a handler performs a handling task, the handler employer shall verify that each handler has received pesticide safety training during the last 36 months, excluding the month in which the training was completed. The agricultural employer shall verify that each worker has received pesticide safety training during the last 5 years before allowing a worker entry into the area:
    - a. To which a pesticide has been applied during the past 30 days; or
    - b. To which a restricted-entry interval for the pesticide has been in effect within the past 30 days.
  2. The agricultural employer and the handler employer, or the designee, shall assure ensure that a worker or handler possesses a training verification card by visually examining the card. If the agricultural employer or the handler employer has no reasonable basis to believe that the worker or handler training verification card is invalid, that determination shall meet the requirements of assuring that the worker or handler has been trained.
  3. A handler or worker does not possess a valid training verification card is valid if:

- a. The handler or worker training verification card has not been issued in accordance with this rule Section; or
- b. The handler or worker training verification card has not been issued to the handler or the worker bearing the training verification card; or
- e.b. The worker training was completed more than five within 5 years of the verification card issuance, or the handler training was completed more than three within 3 years of the verification card issuance, before the beginning of the current month excluding the month in which the training was completed.

**C. Pesticide Safety Information.**

1. The agricultural employer shall provide the following pesticide safety information, in a manner that the employee can understand, to any worker who does not possess a training verification card before that worker enters an area on an agricultural establishment if, within the last 30 days a pesticide has been applied or a restricted-entry interval for the pesticide has been in effect:
    - a. Pesticides may be on or in plants, soil, irrigation water, or drifting from nearby applications;
    - b. Workers may prevent pesticides from entering their bodies by:
      - i. Following directions or signs, or both, about keeping out of a treated or restricted area;
      - ii. Washing before eating, drinking, chewing gum or using tobacco products, or using the toilet;
      - iii. Wearing work clothing that protects the body from pesticide residue;
      - iv. Washing or showering with soap and water, shampooing hair, and putting on clean clothing after work;
      - v. Washing work clothes separately from other clothes before wearing;
      - vi. Washing immediately in the nearest clean water if pesticides are spilled or sprayed on the body, and as soon as possible, showering, shampooing, and changing into clean clothes.
    - c. Additional pesticide safety training shall be provided before the 6th day of entry into a pesticide treated area.
  2. The agricultural employer shall verify compliance by using the employee's signature or other verifiable means to acknowledge receipt of the information required in subsection (C)(1);
- D. Pesticide Safety Training.**
1. The agricultural employer shall provide pesticide safety training to a worker before:
    - a. That worker enters a treated area on an agricultural establishment during a restricted-entry interval to perform early-entry activities;
    - b. The 6th day that the worker enters an area on the agricultural establishment if a pesticide has been applied within the past 30 days, or a restricted-entry interval for the pesticide has been in effect within the past 30 days.
  2. The pesticide safety training program shall be in a language easily understood by the workers or handlers, using a translator if necessary.
    - a. General pesticide safety information presented either orally from written materials, or audiovisually, shall contain nontechnical terms that the han-

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- handlers and workers can understand. The trainer also shall respond to handlers' and workers' questions.
- b. Information shall relate solely to pesticide safety training.
- c. Specific pesticide safety training information including:
- i. Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and increased sensitivity;
  - ii. Routes by which pesticides can enter the body;
  - iii. Signs and symptoms of common types of pesticide poisoning;
  - iv. Emergency first aid for pesticide injuries or poisonings;
  - v. How to obtain emergency medical care;
  - vi. Routine and emergency body decontamination procedures, including emergency eye-flushing techniques;
  - vii. Warnings about taking pesticides or pesticide containers home.
  - viii. How violations may be reported to the Department.
- d. In addition to the information in subsection (D)(2)(c), the pesticide safety training program for the worker shall include the following:
- i. Where and in what form pesticides may be encountered during work activities;
  - ii. Hazards from chemigation and drift;
  - iii. Hazards from pesticide residue on clothing;
  - v. Requirements of this Article designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, posting of warning signs, oral warning, the availability of specific information about applications, protection against retaliatory acts, and the design of the following warning sign.



- e. In addition to the information in subsection (D)(2)(c), the pesticide safety training program for the handler shall include the following:
- i. Format and explanation of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards;
  - ii. Need for and appropriate use of personal protective equipment;
  - iii. Prevention, recognition, and first aid treatment of heat-related illness;

- iv. Safety requirements of handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup;
  - v. Environmental impact of drift, runoff, and potential impacts on wildlife;
  - vi. Requirements of this Article that shall be followed by handler employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontamination, and protection against retaliatory acts.
- f. Upon the successful completion of training, the trainer shall issue a training verification card, as prescribed by the Department, to each handler or worker and shall maintain a record in indelible ink containing the following information:
- i. The name and signature of the trained worker or handler;
  - ii. The training verification card number;
  - iii. The issue and expiration date of the training verification card;
  - iv. The social security number or the unique trainer-assigned identification number of the worker or handler;
  - v. The name and signature of the trainer; and
  - vi. The address or location of where the training occurred, including city, county and state.

**B-E.** Training workers for early entry irrigation and limited contact early entry activities, permitted by R3-3-1005 as prescribed in R3-3-1002, shall consist of instructing the worker in pesticide safety occur before the worker enters a treated area on the an agricultural establishment during a restricted-entry interval and contacts anything that has been treated with the pesticide to which the restricted-entry interval applies, including soil, water, or surfaces of plants.

**C.** Except as provided in subsection (B), training for other agricultural workers shall take place:

1. Until October 20, 1997, before the 16th day that a worker enters an area on the agricultural establishment where, within the last 30 days a pesticide has been applied or a restricted-entry interval for such pesticide has been in effect.
2. After October 20, 1997, before the sixth day that a worker enters an area on the agricultural establishment where, within the last 30 days a pesticide has been applied or a restricted-entry interval for such pesticide has been in effect.

**D.** Before a handler performs a handling task, the handler employer shall verify, pursuant to subsection (H), that the handler has been trained in accordance with this rule during the last three years, counting from the end of the month in which the training was completed.

**E.** Exceptions:

1. A handler who is currently certified as an applicator of restricted-use pesticides, pursuant to R3-3-207 or R3-3-208, need not be trained as a handler or possess a handler certificate in accordance with this rule.
2. A worker who is currently certified as an applicator of restricted-use pesticides, pursuant to R3-3-207 or R3-3-208, or who satisfies the handler training requirements prescribed in paragraphs (F)(2) and (4), need not be

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- trained as a worker or possess a worker certificate in accordance with this rule.
3. A worker or handler certified as a trainer in accordance with this rule need not be trained as a worker or handler nor possess worker or handler certification.
- F. Trainer requirements.**
1. Any person wishing to be certified as a pesticide safety trainer shall:
    - a. Complete a pesticide train-the-trainer program provided by the Department pursuant to subsection (G); or
    - b. Hold a current restricted-use certification for certified applicators; or
    - c. Be designated as a trainer of certified applicators or pesticide handlers by a State, Tribal, or Federal agency having jurisdiction.
  2. An applicant shall submit an affidavit provided by the Department verifying that workers and handlers shall be trained according to the requirements of subsection (G). The affidavit shall include the following information:
    - a. The name, address, telephone number and signature of the applicant;
    - b. The date of the application.
  3. Trainer certification pursuant to subparagraph (F)(1)(a) is nontransferable and shall be valid for three years from the date of issuance except as otherwise provided in A.R.S. § 3-3105.01(C). Trainer certification shall be automatically renewed after completion of a Department recertification course.
  4. Trainer certification pursuant to subparagraphs (F)(1)(b) is valid until December 31 of the restricted-use certification year except as otherwise provided in A.R.S. § 3-3105.01(C). Trainer certification shall be renewed every three years if the restricted-use certification has been renewed and the trainer has completed the Department trainer recertification course, or three hours of continuing education units approved by the Assistant Director.
  5. Trainers shall retain the information contained in paragraph (G)(6) for five years for workers, and three years for handlers, from the date of issue of the verification card.
  6. The Department may inspect and copy the trainer's worker and handler records prescribed in paragraph (G)(6).
- G. The training program shall contain the following components:**
1. General pesticide safety information shall be presented to handlers and workers either orally from written materials, or audiovisually, in a manner that the handlers and workers can understand (such as through a translator); using nontechnical terms. The presenter also shall respond to handlers' and workers' questions.
  2. Information relating solely to pesticide safety training.
  3. Specific pesticide safety training information including:
    - a. Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization;
    - b. Routes by which pesticides can enter the body;
    - c. Signs and symptoms of common types of pesticide poisoning;
    - d. Emergency first aid for pesticide injuries or poisonings;
    - e. How to obtain emergency medical care;
    - f. Routine and emergency decontamination procedures, including emergency eyeflushing techniques;
    - g. Proper methods of storage and disposal of pesticides and pesticide containers, and warnings about taking pesticides or pesticide containers home.
4. In addition to the information in paragraph (G)(3) the pesticide safety training program for the worker shall convey the following information:
  - a. Where and in what form pesticides may be encountered during work activities;
  - b. Hazards from chemigation and drift;
  - c. Hazards from pesticide residues on clothing;
  - d. Requirements of this Article designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warning, the availability of specific information about applications, and the protection against retaliatory acts.
5. In addition to the information in paragraph (G)(3) the pesticide safety training program for the handler shall convey the following information:
  - a. Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards;
  - b. Environmental concerns such as drift, runoff, and wildlife hazards;
  - c. Need for and appropriate use of personal protective equipment;
  - d. Prevention, recognition, and first aid treatment of heat-related illness;
  - e. Safety requirements of handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup;
  - f. Requirements of this Article that shall be followed by handler employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontaminations, and the protection against retaliatory acts.
6. Upon the successful completion of the training program, the trainer shall issue a training verification card, as prescribed by the Department, to each handler or worker and shall record in ink or other indelible form the following information:
  - a. The name and signature of the trained worker or trained handler;
  - b. The training verification card number;
  - c. The issue and expiration date of the training verification card;
  - d. The social security number or the trainer assigned identification number of the worker or handler;
  - e. The name and signature of the trainer; and
  - f. The training location, by city or county and state.
- I.F. Worker and handler training verification cards from all other federally approved worker safety training programs shall be accepted in Arizona as proof of training.**
- G. Trainer requirements.**
1. Any person wishing to be certified as a pesticide safety trainer shall:

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- a. Complete the Department pesticide safety training program established in subsection (D); or
  - b. Hold a current restricted use certification, issued by the Department for certified applicators.
  2. An applicant shall submit a signed affidavit to the Department verifying that workers and handlers shall be trained according to the requirements of subsection (D)(2). The affidavit shall include the following:
    - a. The name, address, telephone number and signature of the applicant;
    - b. The date of the application.
  3. Trainer certification pursuant to subsection (G)(1)(a) is nontransferable and is valid for 36 months from the date of issuance, excluding the month in which the trainer was certified, except as otherwise provided in subsection (I). Trainer certification shall be renewed upon completion of a Department worker protection standard recertification course.
  4. Trainers shall maintain the records contained in subsection (D)(2)(f) for 5 years for workers, and 3 years for handlers, excluding the month of the verification card issuance.
  5. The Department may inspect and copy the trainer's worker and handler records prescribed in subsection (D)(2)(f).
- J-H.** The Assistant Director or the Assistant Director's representative designee, after showing proper identification and credentials shall be permitted to inspect places where worker safety training is being held and to question trainers and attendees to determine whether the trainer is following compliance with the requirements of this rule Section.
- K-L.** The following actions may be grounds for suspension, revocation, or denial of trainer certification:
1. Failing to follow the worker and handler training requirements set forth in paragraphs prescribed in subsections (G)(4) through (5) (D)(2)(a) through (D)(2)(e).
  2. Failing to issue training verification cards to workers and handlers as prescribed in paragraph subsection (G)(6) (D)(2)(f).
  3. Failing to maintain the training information required prescribed in subsection (G)(5) (4).
  4. Acting as a trainer without certification as prescribed in subsection (F) (G).
  5. Failing to fulfill the requirements of the training agreement affidavit as set forth in subdivision (F)(2) prescribed in subsection (G)(2).
  6. Having had a similar certification revoked, suspended or denied in this jurisdiction or in any other jurisdiction within the last three years 36 months.
- R3-3-1004. Notification and posting Requirements for Farm Labor Contractors**
- A.** The employer shall orally warn employees who work in the fields regarding areas being treated or which have been treated with a pesticide for which the reentry interval has not expired. The oral warning shall be given so that it is clearly understood by each employee. The oral warning shall include:
1. The specific locations and descriptions of the pesticide-treated areas or areas to be treated;
  2. The period of the work day during which workers may not enter without direction.
- B.** The person having controlling authority for the operation of a farm or his designee shall orally provide information to any farm labor contractor performing work on that farm which advises that farm labor contractor of the areas being treated
- or which have been treated with a pesticide for which the reentry interval has not expired. The orally provided information shall include:
1. The specific location and description of the pesticide-treated areas or areas to be treated; and
  2. The period of the workday during which workers are not permitted to enter treated areas
- C.** The person having controlling authority for the operation of a farm or his designee shall post warning signs at the usual points of worker entry to the treated field when any pesticide having a reentry interval of 48 hours or greater is applied to broccoli, cauliflower, celery, flowers, grapes, lettuce, nectarines, ornamentals, peaches, plums, or strawberries.
- D.** Whenever warning signs are required, the warning signs shall be posted before scheduled application and shall be removed within 72 hours after expiration of the reentry interval.
- E.** The warning signs shall contain the words "DANGER" and "PESTICIDES" at the top and "KEEP OUT" at the bottom in a language understood by each employee. Near the center of the sign shall be a circle containing an upraised hand on the left and a stern human face on the right. Letters for all the words shall be red and at least 2 1/2 inches high and clearly legible. The background outside the circle shall be white. The hand and a large portion of the face shall be white. The length of the hand shall be at least twice the height of the letters and the length of the face shall be only slightly smaller than the hand. The remainder of the inside of the circle shall be red.
- A.** The owner or operator of an agricultural establishment shall provide the farm labor contractor who performs work on that agricultural establishment with:
1. The location of the agricultural establishment's central posting site;
  2. The restrictions on entering the treated area as specified in 40 CFR 170.120(d) if a treated area is within 1/4 mile of where workers will be working and the treated area is not posted as allowed or required in 40 CFR 170.120(a), (b) and (c).
- B.** The farm labor contractor shall:
1. Post or provide the worker in writing, with the information in 40 CFR 170.122, or shall post or provide the worker in writing, the specific location of the central posting site for each agricultural establishment on which the worker will be working;
  2. Provide the worker with restrictions on entering a treated area as specified in 40 CFR 170.120(d) if the treated area on the agricultural establishment where a worker will be working is within 1/4 mile of where the worker is working, and the treated area and is not posted as allowed or required in 40 CFR 170.120(a), (b) and (c).
- R3-3-1005. Reentry intervals**
- A.** Where a product specific reentry interval has been established by the United States Environmental Protection Agency for a pesticide product (under the provision of 40 CFR 170, revised July 1, 1988, pages 261 thru 263, which is incorporated herein by reference and on file with the Office of the Secretary of State), that product specific reentry interval shall apply.
- B.** Where no product specific reentry interval has been established by the United States Environmental Protection Agency for a pesticide product, the reentry interval shall be as follows:
1. If the pesticide product contains a sole active ingredient which is in Toxicity Category I and which is an organo-

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phosphorous or carbamate pesticide, the reentry interval shall be 48 hours.

2. If the pesticide product contains any other sole active ingredient which is in Toxicity Category I, the reentry interval shall be 24 hours.
3. If the pesticide product contains a sole active ingredient which is in Toxicity Category II and which is an organophosphorous or carbamate pesticide, the reentry interval shall be 24 hours.
4. If the pesticide product contains any other sole active ingredient which is in Toxicity Category II, the reentry interval shall be the time necessary for sprays to dry, dusts to settle and vapors to disperse.
5. If the pesticide product contains only active ingredients which are in Toxicity Category III or IV, the reentry interval shall be the time necessary for sprays to dry, dusts to settle and vapors to disperse.
6. If the pesticide product contains more than one active ingredient, the reentry interval shall be the longest interval among the active ingredients determined by the criteria in paragraphs (1) through (5).

**C. Reentry for special circumstances is allowed for any of the following:**

1. Irrigating, but only with suitable protection such as chemical resistant boots and gloves.
2. Operating tractors and other machinery, if the employee is not in contact with the plants.
3. Other maintenance or scouting procedures where urgent conditions justify early reentry, but only with the protective clothing and equipment specified by the pesticide product labeling.

**R3-3-1005. Container Used For Mixing or Applying Pesticides**

- A.** All openings on containers used for applying pesticides shall be equipped with covers that prevent splashes and spills.
- B.** Any employer that mixes or applies any liquid pesticide mixture in a container with a capacity of more than 49 gallons shall ensure that a handler is present whenever pesticides are mixed or containers are filled to ensure that the liquid pesticide mixture does not spill over the top of the container, and:
1. That the container is translucent, or
  2. Has a means to indicate externally the internal liquid level in the container, or
  3. Has a filler hose nozzle that automatically stops the filling operation before the liquid pesticide mixture spills over the top of the container.
- C.** Each handler, while mixing pesticides, shall protect the water supply from back-siphoning pesticide mixtures.

**R3-3-1006. Decontamination and washing facilities**

- A.** An employer shall provide a change area for any employee who mixes, loads, applies or otherwise handles pesticides.
- B.** Potable water, soap and towels for routine washing of hands and face, and for emergency washing of the entire body, shall be available for all employees at the worksite where they mix or load pesticides. A minimum of five gallons of water shall be present at the beginning of each workday for one employee and a minimum of ten gallons for two or more employees. This water shall be stored separate from that used for mixing with pesticides unless the tank holding water for mixing with pesticides is equipped with backflow prevention devices to prevent backflow of pesticides into the water. Any other available supply of potable water within 1/4 mile of the mixing and loading site is satisfactory for the purposes of this subsection.

**C. Use of non-potable irrigation water is permitted for emergency decontamination procedures.**

**R3-3-1006. Agricultural Emergency**

**A. Any grower, a group of growers, or designee may inform the Assistant Director of an agricultural emergency.**

**B. Possibility of agricultural emergency.**

1. If during business hours information is obtained showing that a declaration of an agricultural emergency is necessary, the requesting party shall notify the Department immediately and provide the following information:

- a. The cause of the emergency.
- b. The area where the emergency may occur.
- c. An explanation of why early entry is necessary.
- d. Why other methods cannot be used to avoid the early entry, and
- e. The justification that substantial economic loss will occur.

2. The Assistant Director shall render a decision to the requesting party on whether an agricultural emergency exists within 4 hours of receiving the information.

3. If a grower or requesting party does not submit the written documentation in subsection (B)(1) or if the Assistant Director questions the validity or adequacy of the written evidence of the emergency, the Assistant Director shall investigate a grower's entry into the restricted-entry interval area and advise the applicant of the reasons for the denial.

4. If the information in subsection (B)(1) is given orally, the requesting party shall notify the Department immediately and provide the Assistant Director with written evidence of the emergency within 5 days. The Assistant Director shall within 10 business days of receipt of the written evidence of the emergency or completion of the investigation, issue a letter to the requesting party confirming or denying the request for an agricultural emergency.

**C. Occurrence of Agricultural emergency.**

1. If information is obtained after business hours, or during a weekend or holiday, showing that a declaration of agricultural emergency is necessary, the requesting party shall inform the Department, orally, the next business day following the emergency and provide the following information, in writing, within 72 hours of the emergency or notification:

- a. The cause of the emergency.
- b. The area where the emergency occurred.
- c. A brief explanation of why early entry was necessary.
- d. Why other methods could not be used to avoid the early entry, and
- e. The justification that substantial economic loss would have occurred.

2. If a grower or requesting party does not submit the written evidence of the emergency in subsection (B)(1) or if the Assistant Director questions if the written evidence of emergency could have occurred before the emergency, or the validity or adequacy of the written evidence of the emergency, the Assistant Director shall investigate a grower's entry into the restricted-entry interval area and advise the applicant of the reasons for the denial.

3. The Assistant Director shall within 10 business days of receipt of the evidence of emergency or completion of the investigation issue a letter to the requesting party



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confirming or denying the request for the agricultural emergency.

**R3-3-1007. Personal protective measures**

- A.** An employer shall provide clean outer clothing, such as coveralls and chemical-resistant boots or overshoes, daily for each mixer, loader, applicator or other employee who handles Toxicity Category I or restricted-use pesticides and shall provide for cleaning of the clothing after any day when the employee handles the pesticides.
- B.** An employer shall provide all safety equipment required by the pesticide product labeling and provide for its cleaning after each day's use. The employer shall require that all personal protective equipment be maintained and kept in a clean, specially designated place when not in use. This clothing and equipment shall remain the property of the employer. The requirements of this subsection do not supersede pesticide labeling statements which are more restrictive.
- C.** An employer shall provide and require employees to wear splash-resistant goggles or face shields appropriate to safeguard against pesticide exposure when engaged in:
1. Mixing and loading activities;
  2. Adjusting, cleaning or repairing contaminated mixing, loading or application equipment;
  3. Ground application activities using hand-operated or vehicle-mounted or towed equipment except when:
    - a. Injecting or incorporating pesticides into soil; or
    - b. Vehicle-mounted spray nozzles are located below and behind the employee and the nozzles are directed downward.
- D.** Respiratory protection shall be approved by the National Institute of Occupational Safety and Health (NIOSH) or the Mine Safety and Health Administration (MSHA) or the U.S. Department of Agriculture (under the provision of 30 CFR 11, revised July 1, 1988, pages 18 thru 82, which is incorporated herein by reference and on file with the Office of the Secretary of State) for the specific chemical and exposure condition. The employer shall change all respirator filter pads and cartridges in the manner and with the frequency recommended by the manufacturer but in any event, the filters and cartridges shall be changed after not more than eight hours of actual use. If respiratory protection is required, a full face respirator meets the requirements of this subsection.
- E.** For all Toxicity Category I and restricted-use pesticides, and for any other pesticide where the product label states "avoid contact with skin," "do not get on skin," or a similar statement, employees shall wear chemical-resistant gloves when engaged in:
1. Mixing and loading activities;
  2. Adjusting, cleaning or repairing contaminated mix, load and application equipment;
  3. Hand application activities including use of hand-held equipment.
- If a specific type of glove is not specified on a product label, gloves made of rubber, neoprene or other chemical-resistant material that provides equivalent or better protection from the pesticide being handled shall be used.
- F.** If use of gloves is required by subsection (E), the employer shall provide employees with clean gloves each workday. Clean gloves shall be either:
1. Unused gloves;
  2. Previously used gloves which have been thoroughly washed in soap and water.
- G.** If labeling specifies the use of waterproof or chemical-resistant pants and coat or a rain suit, an employer shall provide and require the use of chemical-resistant protective clothing that covers the torso, head, arms, hands, legs and feet. An employee shall not be required to use protective clothing when conditions such as temperatures over 905 Fahrenheit, humidity or length of time required to complete a task could cause heat exhaustion or other heat-related illnesses. Employees working in the following situations are not required to wear chemical-resistant full-body protective clothing unless the pesticide product labeling specifies otherwise:
1. Employees mixing and loading pesticides through a closed system;
  2. Employees working as applicators while in enclosed cabs.
- H.** If natural light in a mixing/loading area is not adequate to allow an employee to read the label and work in a safe manner, an employer shall provide sufficient artificial light in such areas so that employees can safely perform these activities.
- I.** An employer shall keep equipment used for mixing, loading or applying pesticides in good repair and safe to operate. The Director of his designated agent may inspect at any reasonable time equipment used in mixing, loading and application of pesticides. An employer shall provide for the repair or alteration of equipment with any safety defect to remove the hazard before further use.
- J.** All openings on tanks used for mixing or applying Toxicity Category I or restricted-use pesticides shall be equipped with covers that will prevent splashes and spills. Each tank with a capacity of more than 49 gallons that is used to mix or apply any liquid mixture derived from a Toxicity Category I or restricted-use pesticide shall have either:
1. A translucent tank or a properly functioning means to indicate externally the internal liquid level in the tank;
  2. A device on the tank or filler hose nozzle that will automatically stop the filling operation before the pesticide liquid mixture spills over the top.
- K.** If closed systems are utilized, personal protective equipment is not required unless the pesticide product labeling specifies otherwise.
- L.** Any employer who gives pesticide-contaminated clothing or equipment to another person for laundering or cleaning shall inform such person of the pesticide contamination so that such person may take measures to protect himself from exposure to the pesticide contamination.

**R3-3-1007. Violations and Civil Penalties**

- A.** Serious violations. The base penalty for any serious violation is \$500 and no adjustment shall be made for mitigating circumstances. The penalty for a violation in which a person is killed or permanently disabled shall be the maximum allowed in A.R.S. § 3-3113 and 3-3114.
- B.** Nonserious violations. The Assistant Director shall calculate the base penalty for a nonserious violation and determine the civil penalty amount based on the factors as prescribed in A.R.S. § 3-3113(I). If there are contributing or mitigating circumstances, the points may be adjusted, provided the adjustment is documented.

**VIOLATION GRAVITY FACTOR**

(1 - lowest; 4 - highest)

**VIOLATION**  
**Central Posting**

**GRAVITY**  
**1 - 2**



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|                                    |       |
|------------------------------------|-------|
| Training                           | 1 - 4 |
| Decontamination                    | 1 - 4 |
| Personal Protective Equipment      | 1 - 4 |
| Pesticide Applications and Notice  | 1 - 4 |
| Pesticide Application Restrictions | 2 - 4 |
| Other Requirements                 | 1 - 4 |

**C. Size of business.** The Assistant Director shall use:

1. The maximum number of employees at any 1 time during the previous 12 months from the date of notice, including only the Arizona branch offices to determine the size business category; or
2. A site-specific employee count, if the violation does not endanger employees at other locations of the business; or
3. The number of persons trained by a trainer during the previous 12 months that violates the training provision of this Section.

**SIZE-OF-BUSINESS**

| Size Category | Number of Employees or<br>Number of People<br>Trained |
|---------------|---|
| I             | 1-10  |
| II            | 11-75   |
| III           | 76-150  |
| IV            | More than 150   |

- D. Base penalty.** The Assistant Director shall calculate the base penalty for the alleged violation by using the violation gravity factor established in subsection (B) and applying the size-of-business category established in subsection (C).

**BASE PENALTY**

| Gravity<br>Factor | I     | II    | III   | IV    |
|-------------------|-------|-------|-------|-------|
| 1                 | \$250 | \$300 | \$350 | \$400 |
| 2                 | 300   | 350   | 400   | 450   |
| 3                 | 350   | 400   | 450   | 500   |
| 4                 | 500   | 500   | 500   | 500   |

- E. Combined or group violations.** The Assistant Director may combine or group violations.

1. Violations may be combined and assessed 1 penalty when the violation does not cause any immediate danger to public health or safety or damage to property.

EXAMPLE: 8 workers on a harvest crew have received no training and there is no evidence of exposure. This situation may result in only 1 training penalty being assessed against the employer.

2. Violations may be grouped if they have a common element and it is apparent which violation has the highest gravity. The penalty for a grouped violation is assessed on the violation with the highest gravity. Violations may be grouped if they have a common element and it is apparent which violation has the highest gravity. The penalty for a grouped violation is assessed pursuant to the appropriate law or rule with the highest gravity.

EXAMPLE: Two crews from the same company are engaged in an improper handling activity and 1 crew is using a pesticide with a "danger" signal word, (skull and cross bones) while the other crew is using a pesticide with a "warning" signal word. This situation may result in the employer being assessed 1 penalty based on the penalty for the "danger" (skull and cross bones) violation.

- F. If a decision is not reached in a negotiated settlement, the Director may assess a penalty pursuant to A.R.S. § 3-3114.**

**R3-3-1008. Employees working alone; conditions**

- A.** An employee is permitted to work alone with a pesticide in Toxicity Category I or restricted-use pesticides during day-light hours only when arrangements have been made for the employee to make personal, radio or telephone contact with the employer or the employer's designee at intervals not exceeding two hours.
- B.** An employee is permitted to work alone with a pesticide in Toxicity Category I or restricted-use pesticides during night-time hours only when arrangements have been made for the employee to make personal, radio or telephone contact with the employer or the employer's designee at intervals not exceeding one hour.
- C.** A pilot, mixer/loader and flagger team are deemed to be working together. In the case of two ground applicators working in the same field, no additional person is necessary if the applicators can see each other's application vehicles.
- D.** This Section does not apply to government personnel involved in inspecting, testing or sampling pesticides as part of their official duties.

**R3-3-1008. Penalty Adjustments**

- A.** The Assistant Director shall assign an appropriate number of points for each of the following 5 factors to increase the base penalty for a serious violation, or increase or decrease the base penalty for a nonserious violation.
1. If the total adjustment points on a nonserious violation is less than 9, the base penalty is reduced; if it is more than 9, the base penalty is increased.
  2. If the total adjustment points on a serious violation is 3 or less, the base penalty shall be imposed; if it is more than 3, the base penalty is increased.
  3. If a violation is a repeated violation, as prescribed in R3-3-1011 for compliance history, a base penalty adjustment factor shall not be used in assessing a penalty.

**BASE ADJUSTMENT FACTORS**

**Pesticide**

|   |       |
|---|-------|
| Signal word danger with skull and crossbones  | 5     |
| Signal word danger  | 4     |
| Warning   | 3     |
| Caution   | 2     |
| Indirect relation to the violation  | 1     |
| <b>Harm to Human Health</b>   |       |
| Actual Injuries or temporary reversible illness resulting in hospitalization or a variable but limited period of disability. (hospital care greater than 8 hours) | 9     |
| Actual (doctor care required, less than 8 hours)  | 6     |
| Minor supportive care only  | 2 - 4 |
| Consequence potential   | 1 - 2 |
| No relationship found   | 0     |
| <b>Compliance History</b>   |       |
| One or more violations in the previous 12 months  | 4     |
| One or more violations in the previous 24 months  | 3     |
| One or more violations in the previous 36 months  | 1     |
| No violation history  | 0     |
| <b>Culpability</b>  |       |
| Knowing or should have known  | 4     |
| Negligence  | 2     |
| Neither   | 0     |

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### Good Faith

0 - -2

- B. The Assistant Director may reduce the base penalty for a nonserious violation, as determined in R3-3-1007(C), by as much as 80% depending upon the number of employees or trained persons, good faith, and history of previous violations.

### FINAL PENALTY CALCULATION

| Number of Points | Nonserious Violation Penalty Adjustment | Serious Violation Penalty Adjustment |
|------------------|---|--------------------------------------|
| 3 or below       | Base -80%                               | Base Penalty                         |
| 4                | Base -65%                               | Base + 10%                           |
| 5                | Base -50%                               | Base + 20%                           |
| 6                | Base -35%                               | Base + 30%                           |
| 7                | Base -20%                               | Base + 40%                           |
| 8                | Base -5%                                | Base + 50%                           |
| 9                | Base Penalty                            | Base + 60%                           |
| 10               | Base + 20%                              | Base + 70%                           |
| 11               | Base + 35%                              | Base + 80%                           |
| 12               | Base + 50%                              | Base + 90%                           |
| 13               | Base + 65%                              | Base + 100%                          |
| 14               | Base + 80%                              | Base + 100%                          |
| 15 or more       | Base + 100%                             | Base + 100%                          |

### EXAMPLE:

A business employs 26 people in Town A and 14 people in Town B. In addition, 35 seasonal people are employed during the harvest. The total annual employee positions equal 75. The following violations are found during an inspection:

- (1) No training for 35 seasonal workers on the harvest crew.
- (2) No available decontamination supplies.
- (3) No safety poster at the central posting location.
- (4) No emergency telephone number posted, and no medical facility location posted at the central posting location.
- (5) No posted pesticide application information at the central posting location.

Step 1. Use the *Violation Gravity Factor* table to determine the gravity of the violation.

- (1) Training, 1-4 2 points, all 35 workers are combined;
- (2) Decontamination, 1-4 3 points, no supplies were available within the prescribed distance and it has been 25 days since the most recent application;
- (3) - (5) Central Posting, 1-2 1 point, since the violations concerns the same factor, they are combined. (There is evidence that the old poster blew away and the pesticide application information is kept available in the secretary's desk, but

it

is not 'readily' available.)

Step 2. Use the *Size of Business* table to determine the size category.

75 employees falls into the size category II:

Step 3. Use the *Base Penalty* table to determine the base penalty. Use column II based on the *Size of Business* determination from step 2.

Violation 1, with a gravity factor of 2, equals a base penalty of \$350;

Violation 2, with a gravity factor of 3, equals a base penalty of \$400;

Violations 3, 4, and 5, with a gravity factor of 1, equals 1 base penalty of \$300.

Step 4. Using the *Base Adjustment Factors* table to calculate the adjustments, if any. In this case, the base adjustments are uniform in all categories except #4, culpability.

Pesticide. It was a indirect relationship because of the timing of the application and when the workers were in the treated area. 1 point.

Harm to Human Health. There was no harm to health and the pesticide had not been applied recently. 1 point.

Compliance History. This farm has no previous violation history. 0 points.

Culpability. The supervisor attended a "train-the-trainer" course 2 years ago and should have been aware of the requirements of the worker protection standard. Therefore, for the first 2 violations the supervisor should have known about the requirements. For the last 3 violations, the central posting sight was not checked frequently enough to ensure compliance. For violations 1 and 2, 4 points for knowing or should have known; For violations 3, 4, and 5, 2 points for negligence.

Good Faith. The inspector came back 5 days later and the workers were trained the day of the first inspection, the poster was posted and everything was in compliance. Since the employer corrected the violations quickly. -1 point.

Step 5. Add the points for each violation from Step 4.

Violation 1 1+1+0+4+-1=5

Violation 2 1+1+0+4+-1=5

Violations 3, 4, 5 1+1+0+2+-1=3

Step 6. Using the *Final Penalty Calculation* table to determine the appropriate violation penalty adjustment that corresponds with the base adjustment factor point total. Use the definitions for non-serious or serious violations to determine the appropriate violation penalty adjustment column. In this case, use the nonserious penalty adjustment column.

|                    |          |            |             |
|--------------------|----------|------------|-------------|
| Violation 1        | 5 points | Base -50%= | 350-        |
| 175=\$175          |          |            |             |
| Violation 2        | 5 points | Base -50%= | 400-        |
| 200=\$200          |          |            |             |
| Violations 3, 4, 5 | 3 points | Base -80%= | 300 -240=\$ |
| 60                 |          |            |             |

Adjusted Penalty Total \$435

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**R3-3-1009. Failure-to-Abate**

- A. The Director shall issue a notification of failure-to-abate an alleged violation when a violation has not been corrected as specified on the citation. Failure-to-abate penalties, pursuant to A.R.S. § 3-3113(E), shall be applied if an employer has not corrected a previous cited violation that is a final order of the Director. When determining the appropriate penalty amount, the Director shall take into consideration a good faith effort to abate the violation.
- B. If a person does not file a timely notice of contest within the 30-day contest period, the citation and proposed penalties shall be a final order of the Director.
- C. If a person files a notice of contest pursuant to A.R.S. § 3-3116(A), the period for the abatement shall not begin, as to those violations contested, until the day following the entry of the final order by the Director affirming the citation. If the person contests only the amount of the proposed penalty, the person shall correct the alleged violation within the prescribed abatement period.

**R3-3-1010. Calculation of Additional Penalties For Unabated Violations**

- A. The Assistant Director shall calculate a daily penalty for unabated violations when failure to abate a serious or nonserious violation exists at the time of reinspection. That penalty shall not be less than the penalty for the violation when cited, except as provided in subsection (C).
1. If no penalty was initially proposed, the Assistant Director shall determine a penalty. In no case shall the penalty be more than \$1,000 per day, the maximum allowed by A.R.S. § 3-3113(E).
  2. The daily proposed penalty shall be multiplied by the number of calendar days that the violation has continued unabated, except for the following: The number of days unabated shall be counted from the day following the abatement date specified in the final order. It shall include all calendar days between that date and the date of reinspection, excluding the date of reinspection.
- B. When calculating the additional daily penalty, the Assistant Director shall consider the extent that the violation has been abated, if the employer has made a good faith effort to correct

the violation, and it is beyond the employer's control to abate. Based on these factors, the Assistant Director may reduce or eliminate the daily penalty.

EXAMPLE: If 3 of 5 instances have been corrected, the daily proposed penalty (calculated as outlined in subsection (A) without regard to any partial abatement), may be reduced by the percentage of the total violations which have been corrected, in this instance, 3 of 5, or 60%.

**R3-3-1011 Repeated or Willful Violations**

- A. The Assistant Director shall calculate a penalty for each violation classified as serious or nonserious if similar violations are repeated within the last 36 months from the date of notice.
1. The penalty for a repeated nonserious violation shall be doubled for the first repeated violation and tripled if the violation has been cited twice before, up to the maximum allowed by A.R.S. § 3-3113(A).
  2. The penalty for a repeated serious violation shall be multiplied 5 times for the first repeated violation and 7 times if the violation has been cited twice before, up to the maximum allowed by A.R.S. § 3-3113(A).
  3. The penalty for a repeated serious violation in which someone is disabled or killed shall be multiplied 10 times for each repeated violation, up to the maximum allowed by A.R.S. § 3-3113(A).
  4. A repeated violation having no initial penalty shall be assessed for the first repeated violation as determined by this Article.
  5. If the Assistant Director determines, through documentation, that it is appropriate, the penalty may be multiplied by 10, up to the maximum allowed by A.R.S. § 3-3113(A).
- B. The Assistant Director may adjust the gravity based penalty by a multiplier up to 10 for any willful violation, up to the maximum allowed by A.R.S. § 3-3113(A).
- C. The Assistant Director shall not allow a reduction for any serious or nonserious willfully repeated violation.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 3. AGRICULTURE**

**CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION**

**PREAMBLE**

1. **Sections Affected:**  
R3-4-233  
R3-4-233
- Rulemaking Action:**  
Repeal  
New Section
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule are implementing (specific):**  
Authorizing statutes: A.R.S. §§ 3-107  
Implementing statutes: A.R.S. §§ 3-201.01(A), 3-202, 3-204, 3-205, and 3-210
3. **The name and address of agency personnel with whom persons may communicate regarding the rule:**  
Name: Shirley Conard, Rules Specialist  
Address: Arizona Department of Agriculture

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1688 West Adams, Room 124  
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

**4. An explanation of the rule, including the agency's reasons for initiating the rule:**

The Lettuce Mosaic rule establishes the requirements for shipping lettuce seed into Arizona and for growing lettuce in the state. The repeal and adoption of this rule will remove outdated and gender specific terminology; information not essential to the rule; unnecessary references to statute; clarify existing language; and set up a structure and format consistent with other Department rules.

In spite of the current rule and the wishes of the lettuce industry, seed has been planted that is not lettuce mosaic-indexed. As a result, growers have notified the Department that lettuce mosaic exists in various lettuce crops in the state. However, no lettuce mosaic has been officially identified by the State Agricultural Laboratory and no lettuce crops have been abated by the Department.

Lettuce breeders have expressed the need to plant uncertified seed for trial purposes. The proposed rule will permit lettuce breeders to plant uncertified lettuce seed under the condition that they monitor the field, maintain the integrity of the crop and remove any diseased plants. Only minimum information is required on the permit to ensure confidentiality.

**5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority to a political subdivision of this state:**

Not applicable.

**6. The preliminary summary of the economic, small business, and consumer impact, and solicitation of comments on the summary:**

This rule will accommodate plant breeders wishing to grow lettuce that has not been mosaic-indexed provided they follow guidelines to prevent the spread of the lettuce mosaic virus.

*A. Estimated Costs and Benefits to the Arizona Department of Agriculture.*

There are no inspections resulting from this rulemaking and only a minimal amount of clerical work to administer the permits. The administrative functions will be incorporated into current workload with no significant costs to the Department for administering these rules.

*B. Estimated Costs and Benefits to Political Subdivisions.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

*C. Businesses Directly Affected By the Rulemaking. (Lettuce growers and breeders)*

This rule requests minimal information from any lettuce breeder wishing to grow uncertified lettuce seed. Although no monitoring will take place, and in fact, no parameters exist to regulate these growers, this rulemaking provides the industry with an 'official' declaration that tests are taking place. The lettuce breeder simply applies for a permit, supplies the pertinent information and a permit will be issued. No costs are associated with this rulemaking.

*D. Estimated Costs and Benefits to Private and Public Employment.*

Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

*E. Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

*F. Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues.

**7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Shirley Conard

Address: Arizona Department of Agriculture  
1688 West Adams, Room 124  
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

**8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed:**

Date: Tuesday, August 4, 1998

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Time: 10 a.m.  
Location: Arizona Department of Agriculture  
1688 West Adams, Room 206  
Phoenix, Arizona 85007  
Nature: Public Hearing

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
None.
10. Incorporations by reference and their locations in the rules:  
None.
11. The full text of the rules follows:

**TITLE 3. AGRICULTURE**

**CHAPTER 4. DEPARTMENT OF AGRICULTURE - PLANT SERVICES DIVISION**

**ARTICLE 2. QUARANTINE**

Section

R3-4-233. Lettuce-Mosaic

R3-4-233. Lettuce Mosaic

**ARTICLE 2. QUARANTINE**

**R3-4-233. Lettuce-mosaic**

- A.** Notice of quarantine: It has been determined that Lettuce Mosaic, a virus, is a dangerous seed-borne pest that is a serious threat to the lettuce industry of the state of Arizona. In order to prevent the introduction of this serious pest in seed, it is hereby ordered and declared that the entry of quarantined articles into the state of Arizona shall be governed by the following quarantine. In addition, certain cultural practices are necessary to destroy infected host plants following harvest or abandonment and to prevent spread to uninfected crops.
- B.** Pest: Lettuce Mosaic, a virus.
- C.** Area under quarantine: All states and districts of the United States, including the state of Arizona.
- D.** Commodities covered: All varieties of lettuce, *Lactuca sativa*, including head lettuce, butter head lettuce, loose leaf lettuce, and romaine lettuce seeds, plants and parts thereof.
- E.** Restrictions:
1. Rules governing the importation, transporting, planting, and sale of lettuce seed:
- a. Any lot of lettuce seed imported into, transported within, planted or sold in the state of Arizona, unless authorized by Special Permit by the State Entomologist, shall be mosaic-indexed or mosaic-tested. Mosaic-indexed or mosaic-tested seed shall mean lettuce seed which has been tested by a method approved by the State Entomologist and found to have zero (0.0) seed-borne mosaic virus infected seeds per 30,000 seeds tested, or equivalent method. Said testing shall be performed by a qualified seed testing agency under Special Permit issued by the State Entomologist. (In this regulation, a "lot" is defined as any definite quantity of seed weighing in excess of 1/4 pound.) Arizona Revised Statutes, Title 3, Chapter 2, Section 3-209(B), states: "Any person who brings or causes to be brought into the state plants, fruits, vegetables, agricultural or horticultural products shall, immediately after the arrival thereof, notify the inspector at the place where they may be received

and hold them without unnecessarily moving or placing them where they may be harmful for the immediate inspection of the inspector and shall not deliver them to the person entitled thereto until furnished with a certificate of release by the inspector." (Also see attached extracts from Arizona Revised Statutes, Title 3, Chapter 2, Sections 3-213; 3-214; and 3-215: Concealment of plants or agricultural products; Failure to stop at inspection stations; Violations and penalties.)

Each shipment of a lot or lots of seeds entering the state may be officially sampled in accordance with seed sampling procedures set forth by the State Entomologist.

- b. No person in the state of Arizona shall have in his possession, custody, or control any lot of seed not in compliance with (a) above.
- c. Each shipment of a lot or lots of seed entering the state of Arizona shall be accompanied by an official certificate issued by a plant quarantine officer of the state from which the seed was shipped. Any part or parts of an original shipment of a lot or lots of seed transported in intrastate commerce within the state of Arizona, by common carrier or private carrier offering such lot or lots for sale, except it does not include a person transporting seed for his own use, shall be accompanied by a supplemental certificate issued by an Arizona inspector. Said certificates shall contain the following information:
- i. The statement that "The lot or lots of seed covered by this certificate have been mosaic-tested under the supervision of a qualified inspector and were found to have zero (0.0) seed-borne lettuce mosaic infected seeds per 30,000 tested (zero in 30,000), or equivalent method."
- ii. The name and address of the qualified seed testing agency, as designated by the state Department of Agriculture, or other similar regulatory body of the state of origin, as approved by the Arizona State Entomologist.
- iii. The clearly stated lot number of said shipment of the lot or lots.
- iv. The number of containers in, and weight of, the shipment.

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- d. Each container or subcontainer of seed, in addition to other required information, must have legibly stamped thereon in 8-point type or larger or bear a label containing a statement in 8-point type or larger, tested and found 0.0 in 30,000 infected seeds and the lot number of which the container or subcontainer is a part. In addition to the preceding, each lot or lots, container or subcontainer of coated seed shall have thereon the variety, approximate poundage, and lot number of the original raw seed; also, the name of the person applying the coating.
  - e. Each container or subcontainer of seed offered for planting or sold for planting in the state of Arizona shall be in its original unopened condition and cannot be subdivided for repackaging, except under Special Permit by the State Entomologist.
  - f. Lettuce seedlings and lettuce beddings plants must have been grown from seed which was mosaic-indexed or mosaic-tested as defined in this regulation. Shipments consisting of five flats or less, not intended for commercial planting, are exempt.
2. Rules governing the cultural practices to be followed in growing covered commodities within the state of Arizona:
- a. Whenever the State Entomologist, after investigation, shall find that a field upon which one of the commodities has been grown is abandoned, or on which the harvest of such commodity has been completed, has not been disked, he shall serve upon the owner, tenant, or occupant, a notice in writing (pursuant to A.R.S. § 3-205) that the field shall be disked or otherwise destroyed by the owner of the land, or other person or persons on, occupying, or using the land under any authority, expressed or implied of the owner, at his expense within the time limit specified in the notice after being notified in writing of the violation by an agent of the Commission of Agriculture and Horticulture, and that the host plants must be destroyed to the satisfaction of the State Entomologist.
  - b. All fields of covered commodities in the state of Arizona shall be disked or otherwise destroyed within a reasonable time but not to exceed 15 days after the last day of abandonment or commercial harvest. The date of abandonment or harvest termination shall be determined, after investigation by the State Entomologist, and in cooperation with the Arizona Fruit and Vegetable Standardization Service.
- F. Disposition of violations: Any shipment or lot of quarantined seed as herein defined arriving in Arizona, or found within the state of Arizona, in violation of this quarantine shall be immediately sent out of the state or destroyed at the option and expense of the owner or owners, his or their responsible agents, and under the direction of the Entomologist or his inspectors.
- G. Treatments: None.
- H. The State Entomologist may consult with the Yuma Vegetable Shippers Association or the Vegetable Growers Association, or both, prior to issuing any special permit which is hereby authorized by this regulation.
- I. General rules: See "General Rules and Definitions, Article 1."
- J. Pertinent statutes:

**Arizona Revised Statutes, Title 3, Chapter 2:**

**"Section 3-213. Concealment of plants or agricultural products**

It is unlawful for a person to conceal from a quarantine officer any plant or plant product or to fail to present such plant or plant product or any quarantined article for inspection at the request of such officer."

**"Section 3-214. Failure to stop at inspection station**

It is unlawful for a person in possession or in control of a vehicle to fail to stop the vehicle at a properly signed inspection station, or upon demand of a plant quarantine officer, for the purpose of determining whether any quarantine established pursuant to the provisions of law is being violated."

**"Section 3-215. Violations; penalties**

- A. It is unlawful to wilfully refuse or knowingly neglect to comply with any rule, regulation or order promulgated by the commission for the protection of the agricultural or horticultural industry, or promulgated for the control of a quarantine zone established by the Entomologist or the Commission.
- B. A person obstructing or conspiring to obstruct the Commission or the Entomologist or his representatives, in the performance of their duties, or who violates any provision of this article is guilty of a misdemeanor punishable by a fine of not less than \$50 nor more than \$300 for the first offense, and not less than \$300 nor more than \$500 or imprisonment in the county jail for not more than six months, or both, for each subsequent offense. Each separate violation shall constitute a special offense."

**R3-4-233. Lettuce Mosaic**

**A. Definitions.** In addition to the definitions provided in R3-4-201, the following terms apply to this Section:

- 1. "Integrity" means the planting location is free from the pest.
- 2. "Mosaic-indexed" means lettuce seed that has been tested by a laboratory approved by a state in which the laboratory is located. The tested seed shall have zero seeds infected with the pest per 30,000 seeds tested.
- 3. "Pest" means the virus, lettuce mosaic.

**B. Area Under Quarantine:** All states and districts of the United States.

**C. Commodities Covered:** Plants and plant parts, including seeds, of all varieties of lettuce, *Lactuca sativa*.

**D. Restrictions.**

- 1. Any lettuce seed imported into, transported within, planted or sold in Arizona shall be mosaic-indexed unless authorized by a permit established in subsection (E).
- 2. Each container or subcontainer of seed shall bear a label with the statement "Zero infected seeds per 30,000 tested (0 in 30,000)," or shall be accompanied by an official certificate from the state of origin attesting that the seed is mosaic-indexed.
- 3. Lettuce transplants imported into, transported within, planted or sold in Arizona shall be accompanied by an official certificate from the origin state and shall include:
  - a. The name of the exporter.
  - b. The variety name and lot number of the seed from which the transplants were grown, and
  - c. Verification that the seed from which the transplants were grown meets the requirement in subsection (E)(1).



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4. Exemptions. The requirements of subsection (D) do not apply to:
  - a. Lettuce seed sold in retail packages of 1 oz. or less to the homeowner for noncommercial planting, or
  - b. Any shipment of lettuce transplants consisting of 5 flats or less per receiver for noncommercial planting.
- E. Permits.
  1. A lettuce breeder or researcher may apply for a permit for lettuce seed or transplants that have not been mosaic-indexed, provided:
    - a. Each permit is for a 1/20 acre plot or less;
    - b. The applicant monitors the lettuce for pest symptoms;
    - c. The applicant verifies the integrity of the fields;
    - d. All plants exhibiting pest symptoms are destroyed; and
    - e. The following statement appears on the bill of lading or invoice accompanying each shipment: "This shipment meets Arizona lettuce mosaic permit requirements. Permit number \_\_\_\_\_."
  2. A seed dealer may apply for a permit to import non-mosaic-indexed lettuce seed for temporary storage in Arizona, provided:
    - a. Non-mosaic-indexed lettuce seed is shipped out-of-state and not distributed for use in Arizona.
    - b. The seed dealer maintains and makes available for Department inspection during regular business hours an inventory record on all non-mosaic-indexed lettuce seed which includes:
      - i. The quantity and lot number of non-mosaic-indexed lettuce seed.
      - ii. The date and lot number of non-mosaic-indexed lettuce seed received by the seed dealer.
      - iii. The date and lot number of non-mosaic-indexed lettuce seed shipped out of the state by the receiver, and
      - iv. The destination of each shipment.
    - c. The permit does not preclude inspection of the lettuce seed upon entering Arizona.
- F. The grower shall disk, or otherwise destroy all lettuce fields within 10 days after the last day of commercial harvest or abandonment, unless prevented by documented weather conditions or documented circumstances beyond the control of the grower, or in the case of a permittee, as soon as the purpose of the crop is completed.
- G. Disposition of Violation.
  1. Any infected shipment of lettuce seed or transplants arriving in or found within the state, in violation of this Section, shall be immediately destroyed. The owner or the owner's agent shall bear the cost of the destruction.
  2. Any untested shipment of lettuce seed or transplants arriving in or found within the state, in violation of this Section, shall be immediately sent out-of-state or destroyed at the option of the owner or the owner's agent. The owner or the owner's agent shall bear the cost of the destruction or of sending the lettuce seed or transplants out-of-state.
  3. Any Arizona lettuce fields in violation of this Section shall be abated as established in A.R.S. §§ 3-204 and 3-205. The owner or person in charge may be assessed a civil penalty established in A.R.S. § 3-215.01.
  4. Violation of any provision of the permit may result in suspension or revocation of the permit.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**

**PREAMBLE**

1. **Section Affected**

|           |                                 |
|-----------|---------------------------------|
| R4-22-104 | <b><u>Rulemaking Action</u></b> |
| R4-22-106 | Amend                           |
| R4-22-109 | Amend                           |
| R4-22-110 | Amend                           |
2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 32-1803 and 41-1003

Implementing statute: A.R.S. §§ 32-1822(A)(4), 32-1823(A)(1), 32-1825(B) and 41-1073
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

|            |   |
|------------|---|
| Name:      | Ann Marie Berger, Executive Director  |
| Address:   | Arizona Board of Osteopathic Examiners in Medicine and Surgery<br>9535 East Doubletree Ranch Road<br>Scottsdale, Arizona 85258-5539 |
| Telephone: | (602)657-7703   |
| Fax:       | (602)657-7715   |
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed amendment to rule R4-22-104(A) is necessary to update the Board's approval of licensure examinations to reflect

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the currently available and appropriate examinations. The proposed amendment to R4-22-109 is necessary to update the Board's approval of continuing medical education programs. The remaining proposed amendments are necessary to comply with the requirements of A.R.S. § 41-1073, which requires an agency that issues licenses to have final rules in place establishing an overall time-frame during which the agency will either grant or deny each type of license that it issues.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:  
Not applicable.
6. The preliminary summary of the economic, small business, and consumer impact:  
The proposed amendments of the rules will have no economic impact on either the Osteopathic physicians or medical assistants regulated under 4 A.A.C. 22, or the public. The Osteopathic physicians and medical assistants will be informed of the expected time frames required to process applications to this agency. The costs are to the Secretary of State for publication of the rules and to the Board in promulgating them.
7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business and consumer impact statement:  
Name: Ann Marie Berger, Executive Director  
Address: Arizona Board of Osteopathic Examiners in Medicine and Surgery  
9535 East Doubletree Ranch Road  
Scottsdale, Arizona 85258-5539  
Telephone: (602)657-7703  
Fax: (602)657-7715
8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:  
Date: August 22, 1998  
Time: Immediately following the 8 a.m. Board Meeting  
Location: Board of Osteopathic Examiners in Medicine and Surgery  
9535 East Doubletree Ranch Road  
Scottsdale, Arizona 85258-5539  
Nature: Public Hearing
9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
10. Incorporations by reference and their location in the rules:  
None.
11. The full text of the rule follows:

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**

**ARTICLE 1. GENERAL PROVISIONS**

- Section
- R4-22-104. Examination and issuance of licenses; lapse of application
- R4-22-106. Rehearing or review of decision
- R4-22-109. Continuing Medical Education; Approval; Waiver
- R4-22-110. Approval of Educational Programs for Medical Assistants

**ARTICLE 1. GENERAL PROVISIONS**

**R4-22-104. Examination and issuance of licenses; lapse of application**

- A. Examination. Pursuant to A.R.S. § 32-1822(4), an applicant for licensure by examination must pass either the preferred examination by the National Board of Osteopathic Examiners (NBOE) Comprehensive Osteopathic Medical Licensing Examination (COMLEX) with a weighted average of 75% as determined by the NBOE National Board of Osteopathic Medical Examination (NBOME) or the federal licensing

examination (FLEX) United States Medical Licensing Examination (USMLE) with a grade of 75 or above in both all components. An applicant for licensure must also pass the Board's jurisprudence examination with a grade of 75 or above. If the applicant had previously passed the Federal Licensing Examination, National Board of Osteopathic Examiners, USMLE or NBOME examination, but has not been either continually licensed or engaged in the practice of osteopathic medicine within seven years prior to application for licensure, the Board may order the taking of the Comprehensive Osteopathic Medicine Special Purpose Examination (COMSPEX) or the Special Purpose Examination (SPEX) as the examination for licensure.

- B. No change.
- C. No change
- D. Time limitations
1. Each applicant for Arizona Osteopathic licensure must pass the written examination if required, and appear before the Board for the personal interview within one

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year from the date the application is filed. Failure to do so shall cause the application to lapse. Within six months from the date of successful completion of the personal interview, each applicant for Arizona Osteopathic licensure must complete all requirements for issuance of the license including payment of all fees and completion of an internship. Failure to do so shall cause the application to lapse. The Board shall issue information to the physician at the end of the year to either accept or deny the physician's application for licensure.

2. Each individual registering to provide locum tenens medical services shall provide all necessary information to the Board within thirty days of registration or the registration will lapse. The Board will either issue the locum tenens registration or deny the registration within thirty days of receipt of the request.
3. Once an osteopathic physician has filed a completed application for renewal of his or her osteopathic medical license, the Board will issue proof of the renewed osteopathic medical license to the physician within sixty days of receipt of the renewal application.
4. Once an osteopathic physician has been denied a license pursuant to A.R.S. § 32-1822, that applicant may not reapply for a license for a period of two years from the date of the final denial order.

**R4-22-106. Rehearing or review of decision.**

- A. Except as provided in subsection (G), any party in a contested case before the Arizona Board of Osteopathic Examiners in Medicine and Surgery who is aggrieved by a decision rendered in such case may file with the Arizona Board of Osteopathic Examiners in Medicine and Surgery, not later than ~~ten~~ fifteen days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place of business.

- B. No change.
- C. No change.
- D. No change.
- E. No change.
- F. No change.
- G. No change.
- H. No change.
- I. No change.

**R4-22-109. Continuing Medical Education; Approval; Waiver**

- A. Board approved continuing medical education programs required by A.R.S. § 32-1825(B) include:
  1. Programs classified by the American Osteopathic Association (AOA) as Approved Category 1A Continuing Medical Education defined in the AOA Continuing Medical Education Guide dated 1983 1998, incorporated herein by reference and on file in the Office of the Secretary of State.
  2. Residency, internship, fellowship or preceptorship in a teaching institution approved by the AOA or the American Medical Association (AMA).

- B. No change.
- C. No change.

**R4-22-110. Approval of Education Programs for Medical Assistants**

- A. The Board shall approve an education program for medical assistants when it has received all of the information specified in paragraph (B)(1) or (2), as applicable, or within one year the Board shall inform that the education program has been approved or denied, concerning the program and the Board determines that the educational program provides at a minimum of the following training.
  - B. No change.
  - C. No change.
  - D. No change.
  - E. No change.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION**

**PREAMBLE**

**1. Section Affected**

R17-4-218  
R17-4-218

**Rulemaking Action**

Repeal  
New Section

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing Statute: A.R.S. § 28-366

Implementing Statutes: A.R.S. §§ 28-2159 and 28-5807

**3. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Lynn S. Golder, Rules Attorney  
Address: Arizona Department of Transportation, Motor Vehicle Division  
4747 North 7th Avenue, 3rd Floor  
Phoenix, Arizona 85013  
Telephone: (602) 255-7491  
Fax: (602) 241-1624

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4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The proposed rulemaking repeals the obsolete rule that implemented staggered vehicle registration in Arizona in 1975, with registration expiration on the last day of each month. End-of-month registration expiration for all vehicles concentrates the Motor Vehicle Division's work of registering vehicles around the last day of each month, causing inconvenience to the public and expense to the Division. For vehicles initially registered in Arizona after November 30, 1998, the replacement rule implements staggered registration, with registrations expiring on the 15th day or the last day of each month, depending on whether the first day of registration is on or before or after the 15th day of the month. The replacement rule promotes uniform distribution of the work of registering motor vehicles throughout the 12 months of the calendar year and within each month in a manner that is economical and accommodating to the public.

5. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

6. **The preliminary summary of the economic, small business, and consumer impact:**

The number of vehicles registered in Arizona will continue to increase. Without mid-month registration expiration, severe concentration of the Motor Vehicle Division's work of registering vehicles will occur around the last day of each month. The replacement rule will mitigate end-of-month concentration, will not create unmanageable mid-month concentration, and will benefit everyone.

The replacement rule is nonintrusive as well as beneficial. The replacement rule operates prospectively only and has no nonvoluntary effect on vehicles registered in Arizona before December 1, 1998. Through a gradual process, eventually one-half of Arizona vehicle registrations will expire on the fifteenth day of the month.

Under the replacement rule the Motor Vehicle Division will have substantial upfront costs for computer programming, personnel training, and form creation, in addition to minor costs for rule promulgation. The benefits from the replacement rule to vehicle owners, including small businesses, to the general public, and to the Motor Vehicle Division outweigh the Division's costs in establishing mid-month registration expiration.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Lynn S. Golder, Rules Attorney  
Address: Arizona Department of Transportation, Motor Vehicle Division  
4747 North 7th Avenue, 3rd Floor  
Phoenix, Arizona 85013  
Telephone: (602) 255-7941  
Fax: (602) 241-1624

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

A person may submit written comments on the proposed rulemaking or economic impact statement by submitting the comments to the person specified in question # 3 no later than the close of the record, which is scheduled for Monday, August 17, 1998, at 5:00 p.m.

Oral proceedings are scheduled as follows:

**PHOENIX**

Date: Tuesday, August 11, 1998  
Time: 10:00 a.m. to noon  
Location: Arizona Department of Transportation Auditorium  
206 South 17th Avenue, Room 107  
Phoenix, Arizona 85007

**TUCSON**

Date: Wednesday, August 12, 1998  
Time: 10:00 a.m. to noon  
Location: Motor Vehicle Division Tucson Regional Office Conference Room  
3565 South Broadmont Drive, Second Floor  
Tucson, Arizona 85713

**FLAGSTAFF**

Date: Thursday, August 13, 1998  
Time: 2:00 p.m. to 4:00 p.m.

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Location: Motor Vehicle Division Flagstaff Field Service Center Conference Room  
1851 South Milton Road  
Flagstaff, Arizona 86001

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
10. Incorporations by reference and their location in the rules:  
Not applicable.
11. The full text of the rules follows:

**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION**

**ARTICLE 2. TITLES AND REGISTRATION**

Section

R17-4-218 Staggered registration

**ARTICLE 2. TITLES AND REGISTRATION**

**R17-4-218 Staggered registration Repealed**

**A.** All vehicles registered in Arizona in 1974 will be renewed during January and February 1975 for varying periods of time according to the following schedule: (see Appendix A for explanation of categories).

| Description | Registration will expire<br>the last day of: |
|-------------|--|
|-------------|--|

|   |               |
|---|---------------|
| Category C, when<br>declared gross weight<br>is 8001 or more pounds | December 1975 |
|---|---------------|

|            |               |
|------------|---------------|
| Category D | December 1975 |
|------------|---------------|

|  |               |
|--|---------------|
| Category G, when<br>declared gross weight<br>is 8001 or more pounds, or flat<br>flat rate weight fee is paid as a<br>part of a gross combination<br>weight declaration | December 1975 |
|--|---------------|

|  |              |
|--|--------------|
| Category G, when declared gross weight<br>is 8000 pounds or less | January 1976 |
|--|--------------|

|            |              |
|------------|--------------|
| Category H | January 1976 |
|------------|--------------|

All other vehicles not included above will be renewed for varying periods according to the last or terminal number, on the license plate(s) assigned to the vehicle during 1974 as follows:

|                     |                |
|---------------------|----------------|
| Last plate number 1 | November 1975  |
| Last plate number 2 | February 1976  |
| Last plate number 3 | March 1976     |
| Last plate number 4 | April 1976     |
| Last plate number 5 | May 1976       |
| Last plate number 6 | June 1976      |
| Last plate number 7 | July 1975      |
| Last plate number 8 | August 1975    |
| Last plate number 9 | September 1975 |
| Last plate number 0 | October 1975   |

**B.** All renewal registrations issued in accordance with the schedule in subsection (A) of this rule will have the registration fee, declared gross weight fee and vehicle license tax prorated according to the number of months between January 1975 and the month of expiration, inclusive.

**C.** Subsequent registration renewals will be due on or before the last day of the month stated in schedule and will be deemed delinquent if not paid to a registering officer on or before that

date. Delinquent renewal applications will be subject to the penalty imposed by A.R.S. § 28-318. The renewal registrations will be issued, and the fees and taxes paid for twelve months from the expiration date.

**D.** Any vehicle not registered in this state during 1974 and for which Arizona registration is sought beginning in January 1975 will be registered for a twelve-month period beginning with the first day of the month in which application is made to a registering officer, except for the following:

1. Those vehicles described in the original schedule whose 1975 registrations will expire in December 1975, consisting primarily of vehicles over 8,000 pounds declared gross weight, trailers registered under gross combination weight regulations, and commercial buses, will be registered at time of initial application for the balance of the time to include the next ensuing December. In such cases, the weight fee and vehicle license tax shall be prorated in accordance with the pertinent statutory authority.

2. All vehicles, regardless of category or vehicle type, registered in this state pursuant to Article 1.1, Chapter 2, Title 28, A.R.S., commonly referred to as a pro rate registration, shall be registered on a calendar year basis, in accordance with applicable laws, regulations and agreements.

**E.** For purposes of determining the applicability of delinquent or late registration penalties pursuant to A.R.S. § 28-318, an application for transfer of license plates pursuant to A.R.S. § 28-308(D), or registration or re-registration of a vehicle pursuant to A.R.S. § 28-314(A), shall be deemed delinquent if it is not received by a registering officer within ten business days of the date of assignment to the applicant on the certificate of title, the date on an accompanying lien instrument or purchase agreement between the applicant and seller, whichever is earlier. For purposes of this rule, business days shall mean those days on which state offices are required by law to be open for business with the general public. If a vehicle is sold or a license plate transferred to another vehicle on a Saturday, Sunday or other state legal holiday, the ten-day limitation shall be computed from the next regular business day.

**F.** When any application for registration, re-registration, renewal or transfer of license plate to another vehicle is sent through the United States mail, it shall be deemed received by the registering officer, for the purpose of avoiding penalties only, on the date shown by the postmark stamped on the envelope containing the application.

**G.** The number plates issued as evidence of registration of passenger vehicles, trucks and trailers for the registration periods

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beginning January 1, 1975, shall be identical with the number plates issued for 1973, but each plate displayed on the rear of the vehicle or, in the case of truck tractors, the plate displayed on the front of the vehicle shall have displayed thereon a reflectorized sticker to be furnished by the Division bearing the year numeral of the year of expiration and a serial number which number shall be recorded on the registration card by the registering officer. The Division shall also furnish a second reflectorized sticker bearing the standard three-letter abbreviation indicating the month of expiration. When the stickers have been affixed to the number plate in accordance with instructions enclosed with the stickers, the plate shall constitute a valid license plate for the registration period specified. The display of either reflectorized sticker on a plate other than the plate to which originally assigned by the registering officer shall be considered to alter the number plate and make the assignee of the plate subject to appropriate action provided for in A.R.S. §§ 28-308(B) and 28-326. This Section shall not apply to dealer plates, transporter plates, motorcycle plates or thirty-day plates.

- H. When a license plate or plates is transferred to a replacement vehicle, a new registration fee shall be paid, together with any other applicable transfer or title fees. The vehicle license tax shall be calculated for the replacement vehicle, prorated to the expiration date of the license plates being transferred. If the prorated tax due for the replacement vehicle is greater than the prorated unexpired portion of the tax paid for the replaced vehicle, the amount of the difference between the two shall be paid to the registering officer. There shall be no refund if the tax due for the replacement vehicle is less than the unexpired prorated tax paid for the replaced vehicle. All proration shall be calculated on the basis of one-twelfth of the total tax for each calendar month or portion thereof.
- I. If the vehicles involved in a transfer of license plates are subject to weight fees, the owner shall make a new declaration of gross vehicle weight, pursuant to A.R.S. § 28-206. If the gross weight is increased, an additional weight shall be paid based upon the difference between the fee due at time of the transfer of the license plates for the weight class in which the original vehicle or vehicle combination was registered and the fee due at the time of the transfer of the license plates for the weight class in which the replacement vehicle or vehicle combination is declared. If the weight class is reduced, there shall be no reduction or refund allowable for any part of the original weight fee previously paid.
- J. When an owner has been required to register a vehicle for a period in excess of 12 months during the change over to the monthly series registration system, and he shall have moved out of the state or ceased to operate the vehicle after expiration of one year, he shall, upon surrender of his license plates and upon furnishing satisfactory evidence of his removal from the state or cessation of operation, be entitled to a refund to be computed on the basis of one-twelfth of the full-year registration fee prescribed for such vehicles, multiplied by the number of months not to exceed six which have not expired at the time of his removal or cessation of operation. The refunds shall be paid from current receipts of the respective fees prior to distribution by the registering officer.
- K. All Arizona license plates affixed to vehicles in the sales inventory of a licensed Arizona vehicle dealer as of 12:01 AM, January 1, 1975, shall be delivered to the Motor Vehicle Division or its authorized agents on or before January 10, 1975.

## **APPENDIX A**

| Category | Vehicle Type | Plate Configuration* |
|----------|--------------|----------------------|
|----------|--------------|----------------------|

- |   |   |               |
|---|---|---------------|
| A | Sedan, Coupe, Roadster, Station wagon, Horseless Carriage Wagon, convertible, Bus, Special Classic Car, Amateur Radio |               |
| B | Same as above—Rental or Lease—Amateur Radio Vehicles only   |               |
| C | All types, self-propelled, registered for commercial use  | AD            |
| D | Bus   | Z             |
| E | Taxi  | Z             |
| F | Now combined with G   |               |
| G | Trailer, boat Trailer, Semi-Trailer   | T, X, A       |
| H | Motorcycle  | MC, aMC, aaMC |
| I | 1/2 Ton or less Pickup Trucks   | N, aN         |
| J | Travel Trailers   | A             |
- \* "a" means a random letter of the alphabet  
 "n" means a random number

Capitalized letters mean only those letters appear in the positions given. There are no variables.

## **R17-4-218 Staggered Registration for Included Vehicles**

### **A. Definitions.** In this Section, unless the context otherwise requires:

1. "Drop box" means a receptacle designated by the Motor Vehicle Division into which an applicant for vehicle registration places items required for registration and from which the Motor Vehicle Division retrieves the items on the next business day.
2. "Electronic delivery" means computer-to-computer transmission of registration information and credit card information to the Motor Vehicle Division by a third-party electronic delivery provider.
3. "Included vehicle" means a vehicle that is not excluded from the staggered registration implemented by this Section and is subject to annual or biennial Arizona registration.
4. "Initial registration" means the first registration of an included vehicle in Arizona.
5. "Month" means a segment of a registration period, measured from the first day of a calendar month to twelve o'clock midnight on the last day of the same calendar month or from the sixteenth day of one calendar month to twelve o'clock midnight on the fifteenth day of the next calendar month, whichever is appropriate. A partial month that includes the first day of the registration period counts as a complete month.
6. "Registration" means initial registration or renewal registration of a vehicle.
7. "Registration fees" means the general registration fee imposed by A.R.S. § 28-2003, the vehicle license tax imposed by A.R.S. § 28-5801, and the commercial registration fee and gross weight fee imposed by A.R.S. § 28-5433, due at the time of registration.
8. "Registration period" means the time-frame during which a vehicle registration is valid.
9. "Regular business day" means a day other than a Saturday, Sunday or holiday observed on a weekday in accordance with A.R.S. § 1-301.
10. "Renewal period" means the time-frame from the expiration of the prior registration to the expiration of the current renewal registration.
11. "Renewal registration" means the second and subsequent registrations of an included vehicle.
12. "Third-party electronic delivery provider" means a public or nonpublic entity that, for a service fee charged and collected by the third-party provider, electronically or



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telephonically receives vehicle registration and credit card information from an applicant for registration and electronically transmits the information to the Motor Vehicle Division.

13. "Third-party provider of registration functions" means a public or nonpublic entity authorized by A.R.S. § 28-5101 that, for a service fee charged and collected by the third-party provider, receives from and processes for an applicant for registration a registration application or registration card, registration fees, and any other required item.
14. "Twelve o'clock midnight" means the time immediately preceding the time when one calendar day is succeeded by the next calendar day.

**B. Excluded vehicles.**

1. A vehicle exempt from registration is excluded from the staggered registration implemented by this Section. A vehicle subject to one of the following types of registration is excluded from the staggered registration implemented by this Section:
  - a. Allocated registration.
  - b. Apportioned registration
  - c. Fleet registration in accordance with A.R.S. § 28-2202.
  - d. Interstate registration.
2. In addition to the vehicles excluded by subsection (B)(1), the following vehicles are excluded from the staggered registration implemented by this Section:
  - a. A vehicle subject to a one-time registration fee;
  - b. A government vehicle, a vehicle owned by an official representative of a foreign government, or an emergency vehicle owned by a nonprofit organization as in A.R.S. § 28-2511(A);
  - c. A noncommercial trailer that is not a travel trailer as defined by A.R.S. § 28-2003(B) and is less than 6000 pounds gross vehicle weight in accordance with A.R.S. §§ 28-2003(A)(7) and 28-5801(C);
  - d. A vehicle covered by a vehicle license tax exemption that does not permanently reduce the vehicle license tax to \$35 or less.

**C. Included vehicles - initial registration before December 1, 1998**

1. The initial registration before December 1, 1998, of an included vehicle 8001 pounds or more, subject to the gross weight fee, and registered annually shall expire at twelve o'clock midnight on last day of December in the year the vehicle first becomes subject to registration in Arizona.
2. The initial registration before December 1, 1998, of an included vehicle 8001 pounds or more, subject to the gross weight fee, and registered biennially shall expire at twelve o'clock midnight on the last day of December one year after the year the vehicle first becomes subject to registration in Arizona.
3. The initial registration before December 1, 1998, of an included vehicle less than 8001 pounds, subject to the gross weight fee, and registered annually shall expire at twelve o'clock midnight on the last day of the month, twelve months from the month the vehicle first becomes subject to registration in Arizona.
4. The initial registration before December 1, 1998, of an included vehicle less than 8001 pounds, subject to the gross weight fee, and registered biennially shall expire at twelve o'clock midnight on the last day of the month,

twenty-four months from the month the vehicle first becomes subject to registration in Arizona.

5. The initial registration before December 1, 1998, of an included vehicle not subject to the gross weight fee and registered annually shall expire at twelve o'clock midnight on the last day of the month, twelve months from the month the vehicle first becomes subject to registration in Arizona.
6. The initial registration before December 1, 1998, of an included vehicle not subject to the gross weight fee and registered biennially shall expire at twelve o'clock midnight on the last day of the month, twenty-four months from the month the vehicle first becomes subject to registration in Arizona.
7. Proration of registration fees shall be in accordance with A.R.S. §§ 28-2159, 28-5807, and 28-5434.

**D. Included vehicles - initial registration after November 30, 1998.**

1. If the 1st day of registration is from the 1st day through the 15th day of the month, the initial registration after November 30, 1998, of an included vehicle registered annually shall expire at midnight on the 15th day of the month, 12 months from the month the vehicle 1st becomes subject to registration in Arizona.
2. If the 1st day of registration is from the 16th day through the last day of the month, the initial registration after November 30, 1998, of an included vehicle registered annually shall expire at midnight on the last day of the month, 12 months from the month the vehicle 1st becomes subject to registration in Arizona.
3. If the 1st day of registration is from the 1st day through the 15th day of the month, the initial registration after November 30, 1998, of an included vehicle registered biennially shall expire at midnight on the 15th day of the month, 24 months from the month the vehicle 1st becomes subject to registration in Arizona.
4. If the 1st day of registration is from the 16th day through the last day of the month, the initial registration after November 30, 1998, of an included vehicle biennially registered shall expire at midnight on the last day of the month, 24 months from the month the vehicle 1st becomes subject to registration in Arizona.

**E. Included vehicles - renewal registration.**

1. If initial registration is before December 1, 1998, the renewal registrations of an included vehicle annually registered shall expire at midnight on the last day of the month, 12 months from the expiration of the previous registration period.
2. If initial registration is before December 1, 1998, the renewal registrations of an included vehicle biennially registered shall expire at midnight on the last day of the month, 24 months from the expiration of the previous registration period.
3. If initial registration is after November 30, 1998, the renewal registrations of an included vehicle annually registered shall expire at midnight on the 15th day of the month or the last day of the month, 12 months from the expiration of the previous registration period.
4. If initial registration is after November 30, 1998, the renewal registrations of an included vehicle biennially registered shall expire at midnight on the 15th day of the month or the last day of the month, 24 months from the expiration of the previous registration period.

**F. Registration contents: renewal registration due date**

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1. Registration contents. If received by the Motor Vehicle Division from other than a 3rd-party electronic delivery provider, the registration of an included vehicle shall contain payment of registration fees; the application for registration or registration card; and any other required item, such as compliance with the motor vehicle emissions testing requirements of A.R.S. § 49-542. If received by the Motor Vehicle Division from a 3rd-party electronic delivery provider, the registration of an included vehicle shall contain required registration information and credit card information.
  2. Renewal registration due date. If the date of expiration of the prior registration period falls on a regular business day, the renewal registration is due by midnight on the date of expiration of the prior registration period. If the date of expiration of the prior registration period does not fall on a regular business day, the renewal registration is due by midnight on the next regular business day.
- G. Receipt of registration.**
1. If the Motor Vehicle Division or a 3rd-party provider of registration functions does not receive a vehicle registration application or registration card, registration fees, and any other required item when due, or if the Motor Vehicle Division does not electronically receive required registration information and credit card information when due, the registration shall be subject to the penalties for delinquent registration imposed by A.R.S. § 28-2162. For the purpose of avoiding the penalties for delinquent registration, the date of receipt of the registration application or registration card, registration fees, and any other required item, or of required registration information and credit card information, shall be the following:
    - a. The date the registration application or registration card, registration fees, and any other required item are presented to a Motor Vehicle Division facility counter or the counter of a third-party provider of registration functions;
    - b. The date of the United States Postal Service postmark stamped on the envelope containing the registration application or registration card, registration fees, and any other required item;
    - c. The date of receipt by a private express mail carrier indicated on the package containing the registration application or registration card, registration fees, and any other required item;
    - d. The date of the last regular business day preceding the date of retrieval of the registration application or registration card, registration fees, and any other required item from a designated Motor Vehicle Division drop box;
    - e. The time of electronic or telephonic receipt of required registration information and credit card information by a third-party electronic delivery provider, unless the vehicle is not in compliance with the motor vehicle emissions testing requirements.
  2. The Motor Vehicle Division shall process renewal registrations over the counter at a Motor Vehicle Division facility only in accordance with A.R.S. § 28-2160 and shall retrieve deposited items from a designated Motor Vehicle Division drop box on each regular business day.
- H. Number plates.** The Motor Vehicle Division shall assign and issue a number plate or plates to an included vehicle as evidence of registration. The number plate or plates shall be appropriately attached and displayed on the assigned vehicle. Improper number plate display shall subject the owner and operator of an included vehicle to the sanctions imposed by A.R.S. § 28-2531(B) and 28-2532. Any registration tabs or stickers issued by the Motor Vehicle Division shall be displayed on the appropriate number plate of the assigned vehicle.